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The Nation.

December 7, 1985 $1.25; U.K. 65p

DEC 9 - 1985

EDITORIAL

HIGH COST OF 'FIRM ACTION'

A big body count can really make President Reagan's day. The Administration hardly waited for the corpses to be cleared out of Egyptair Flight 648 before it offered congratulations to President Hosni Mubarak for his "firm action" against terrorism. The triumphant tone of the message, tinged with the usual expression of regret at the loss of life, was strikingly similar to that delivered a few weeks ago to Colombia's President Belisario Betancur Cuartas after he ordered troops to storm the Palace of Justice, where guerrillas were holding much of the country's judiciary hostage. So the Administration must be pleased with the November figures: 160 dead between Malta and Bogotá, scores more wounded, and the international terrorist herd (as Charles Bronson calls it in *Death Wish 3*) considerably thinned as winter approaches.

The trouble with body counts is that they have more meaning as vital statistics than as historical facts. Piles of bones in Vietnam, in the Middle East, in Central America, could not resolve the essential political problems of those places. What is more likely to result from the kind of firm action Reagan and Secretary of State Shultz favor is an escalation of terrorism rather than an abatement. There are more than enough Moslem fundamentalists, Palestinian hijackers and Libyan hit squads to disrupt travel in the eastern Mediterranean for the foreseeable future, and hi-tech commando raids or surgical strikes—even if they are "cleaner" than the one last week—will surely up the ante of the violence.

The Entebbe solution of 1976 was popular but obviously ineffective in the long run. The Betancur solution was dramatic but probably counterproductive. Mubarak's earlier tactic of negotiation in the Achille Lauro shipjacking angered Reagan but certainly saved lives. It's too bad the Egyptian leader didn't stick to his guns.

MEESE'S CONSTITUTION SHELL GAME
Herman Schwartz

NO FREEDOM AT RADIO LIBERTY
Katrina vanden Heuvel

IS NO-FAULT DIVORCE SEXIST?
Peter Schrag

RALSTON CRAWFORD'S LONESOME HIGHWAY
Arthur C. Danto

URBAN NIGHTMARES
Andrew Kopkind

MACARTHUR FOUNDATION—I

THE CHICAGO SCHOOL OF PHILANTHROPY

JAMIE KITMAN

When the directors of America's second-largest charitable foundation voted down a package of internal reform measures in June, they closed a curious chapter in American philanthropy much the same way they had opened it: with more than a trace of self-interest.

From its inception in 1978, the $2 billion John D. and Catherine T. MacArthur Foundation has set a new low standard for charitable organizations. Although it has given away more than $240 million over the past seven years, certain directors of the Chicago-based trust have never lost sight of the maxim, Charity begins at home. In its service, they have engaged in blatant self-dealing, misled Congress and offices of the Federal government and paid themselves among the highest fees ever received by charitable trustees. Their failure to discharge fully the foundation's legal obligation to distribute a set proportion of its assets every year has shortchanged the public they are supposed to benefit.

Because Federal authorities and the Illinois Attorney General's office have failed to act, although they are aware of the facts, most of the directors—whose ranks have included prominent Chicago businessmen, leading academics and former government officials—remain in office. Excused from the burdensome ethical obligations and legal duties that appropriately attend the creation of a mammoth charitable institution, they are living proof that the Reagan revolution has spread to the philanthropic community. And they remind us, once again, that folks do it differently in Chicago.

(*Continued on Page 615*)

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LETTERS.

SENATOR GORE ON DÉTENTE

Washington

Thanks for sending me Stephen F. Cohen's column on détente ["Sovieticus," Nov. 9]. The reason few people are speaking out for détente is because the word is in disrepute. The reason it is in disrepute is because of the failed expectations it generated: that is, hope that there would be a surcease of roller-derby behavior by the Soviet Union in its conduct of external affairs. Moreover, even for those who do not make this assessment, there is another problem: détente appears to have died as a result of the combined impact of the Administration's approach to Soviet relations and the Soviet succession crisis, which, in effect, began even before Leonid Brezhnev's death.

Twice, the American electorate has chosen a government whose leaders profess a desire to live peacefully with the Russians but whose appointees think in terms of rolling back Soviet power, if not actually destroying the Soviet system. Moderates in Congress have had their hands full simply trying to prevent an outright conquest of American policy by the most conservative forces in the Administration. In this context, moreover, our attention has focused on arms control rather than the broader U.S.-Soviet relationship; it has been argued that without success in the former, debate on how to manage the latter would be purely academic.

The foregoing notwithstanding, I agree that Cohen is right to attribute as much importance as he does to the U.S.-Soviet relationship, and I also believe that he has identified the issues that need to be revisited. For politicians, the time and place for such a debate coincides with national elections, which are still down the road. For political scientists and other analysts, now is the right time to engage in such a debate. However, even for them, I suspect, there is so much uncertainty about the Soviet Union under new leadership that many are withholding judgment about the potential for new directions in U.S.-Soviet relations.

Finally, the Soviet Union is not the only superpower with which America must grapple. Indeed, the Soviet Union fits the description of superpower in exactly one domain—military strength. A slightly broader definition of "security," however, would suggest that we have problems of an economic nature that threaten our nation's well-being. These problems are related to, but not limited to, our relations with Japan as a rival superpower of a different kind. That the two conflicts are linked, via the economic costs of our defense expenditures, I would not deny. But, in his frustration, Cohen should remember that once you have reached the point in policy, politics or public commentary where all issues are interrelated, people should not behave as specialists.

Even so, I appreciate Cohen's argument and, even more, his way of identifying the issues that ought to be considered. For this reader at least, the point is well taken.

Senator Albert Gore Jr.

UNITING FOR ACCURACY

Palo Alto, Calif.

In keeping with your editorial policy of dedication to the truth, I wish to point out that Marcus Raskin made an error in his September 21 article, "Still the Best Hope for Peace."

The battle of Korea started on June 25, 1950. U.S. troops were ordered in on June 27, 1950. This all came about as a result of an action by the U.N. Security Council, which was missing one member: the Soviet Union had walked out a short time before over a dispute concerning Nationalist China.

The Soviet Union returned to its Security Council seat in mid-July 1950. The Uniting for Peace Resolution was passed by the General Assembly in November 1950 to prevent the Soviet Union from using its veto power to affect the conduct of the in-process hostilities.

Richard L. Barkley

RASKIN REPLIES

Washington

Richard L. Barkley has a point. However, it is misleading to say, as he does, that U.S. troop involvement "came about as a result of an action by the U.N. Security Council." The Security Council was an audience; it was not an actor on the stage.

On Monday, June 26, 1950 (according to Glenn Paige's day-by-day account, *The Korean Decision*), President Truman agreed with Dean Acheson's recommendations that "U.S. airplanes and naval vessels would be ordered into combat against the aggressors south of the thirty-eighth parallel." Those orders were conveyed to Gen. Douglas MacArthur in the late evening of June 26.

MacArthur insisted that the South Korean troops and people of the Republic of Korea be immediately informed, although, according to Paige, nothing was to be said in English of the impending American air and "gradual" troop involvement. The broadcast to this effect was made by the Republic of Korea at 3 A.M. (E.S.T.) on Tuesday, June 27, at ten-minute intervals throughout the day. At 11:45 P.M. (E.S.T.) the Security Council passed the resolution, proposed by the United States, calling on member nations "to furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area." The U.S. message was sent twenty hours before the U.N. Security Council vote that accepted the resolution.

Finally, while it is clear that ground troops were contemplated from the start by General MacArthur, official records indicate that the decision for the use of those troops came about after a request made by MacArthur on June 30, 1950, not on June 27.

Marcus Raskin

WIENER UPDATE

Washington

The clarification submitted by Jonathan Wiener requires an update ["Letters," Oct. 12]. The American Historical Association's governing council passed on the question of further published communications on the matters in debate between Henry Turner and David Abraham, but the A.H.A.'s professional division committee ruled against publishing Turner's advertisement. On further consideration, the division decided to publish the full communication from Turner as a letter to the editor, with a reply occupying equal space from Abraham.

Samuel R. Gammon
Executive Director
American Historical Association

CORRECTIONS

Two sentences in Cynthia Brown's article "Chileans Are Gaining on Pinochet" [Nov. 23] were garbled in the editing process. They appeared on pages 551 and 552, respectively, and should have read:

"Not only was the manner of their disposal unheard of in Chile, where murdered prisoners do not reappear without some official cover story for their deaths, but the condition of the corpses was likewise shocking: they became known as the *degollados* ('those with the slashed throats')."

"For successful mobilization, the center and the right need the Marxist left—principally the P.C. and an allied faction of the Socialist Party."

* * *

The misstatement of Alva Myrdal's gender in Marcus Raskin's article "Still the Best Hope for Peace" [Sept. 21], noted by reader Elizabeth Carden in the October 12 "Letters," was the editors', not the author's, error.

The Nation welcomes letters—typed, double spaced and no longer than 300 words, please. Longer letters may be edited for reasons of space. Our policy is to publish as many letters as space permits, but inevitably a backlog develops, so please bear with us.

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Editor, Victor Navasky

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EDITORIALS.

Limits of Dissent

In cold wars, grounds of conscience can easily become fields of fire. Teachers, writers, clergy and social dissidents stand in the militarized zone of ideas and beliefs, and they historically come under attack from all sides. Some unusually big guns are trained this year on Margaret Randall, the well-known editor (*El Corno Emplumado*) and writer (*Sandino's Daughters*) who gave up her U.S. citizenship eighteen years ago to live and work in Mexico. But that was in another country and a different age, and Randall is back in the United States, teaching American studies and women's studies at the University of New Mexico. She is married to an American, she has an American child, American parents and an American life. She would like to have an American green card as the first step to regaining her lost citizenship, and in political peacetime she would get both as a matter of course. But this is war, and the government is mobilizing its legal machinery to deport her.

Driven by the ideological imperatives of the Reagan Administration's campaign against the Latin American left and its sympathizers, the Immigration and Naturalization Service wants to declare Randall "ideologically excludable" under the McCarran-Walter Act of 1952, one of the enduring structures of the McCarthy era. Her ideological crimes include criticizing the war in Vietnam and U.S. foreign policy, and praising the accomplishments of certain revolu-

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tions. What made the government really see red was a line she wrote in 1975: "The Vietnamese Revolution has won its greatest victory. U.S. imperialism has suffered its greatest defeat." True though that was—not even Accuracy in Academia could contradict the fact—it was Randall's evident approval that got her into trouble. An I.N.S. panel went through her bibliography (she has written some forty books) and concluded that her writings "go far beyond mere dissent, disagreement with, or criticism of the United States or its policies," into some unspecified realm of ideological opposition too horrible to allow her residency. The panel ordered deportation proceedings to begin. The Center for Constitutional Rights is challenging that decision in Federal court, and the case is likely to carry into next year.

Randall has something of a *cause célèbre* in Albuquerque, where she grew up and where she now teaches and lives on a temporary continuous visitor's visa. Her colleagues are unanimously supportive; the faculty senate backed her without a dissenting vote. The conservative student senate, however, voted against her almost 3 to 1, and a group of right-wing collegians held a downtown rally to press for her deportation. To facilitate her departure, they "presented" her with a one-way bus ticket to El Paso and $5 to get her across the border. New Mexico's Republican Senator Pete Domenici wants Randall out, but Democratic Senator Jeff Bingaman is on her side and liberal Governor Toney Anaya has so far stayed neutral. Mary Martha Weigel, chair of the American studies department, of which Randall is a member, is a co-plaintiff in Randall's suit against the I.N.S., and a group of prominent writers, including Norman Mailer, Alice Walker, Grace Paley, Toni Morrison, Kurt Vonnegut, Arthur Miller and William Styron, have joined the proceedings. Randall's own students are steadfastly loyal, and the whole experience has been, to say the least, educational for them. "Most of them weren't even born in the fifties," she said recently, "and they have no idea what life was really like during McCarthyism."

The government can hardly argue that Randall's residency would constitute a danger, even a dim and distant one, to the country. Her deportation is not meant to serve justice but to create a climate of control. In times of ideological crisis, the government finds the McCarran-Walter Act a useful managerial mechanism; over the years it has denied entry to such hardened thought criminals as Graham Greene, Farley Mowat, Pablo Neruda, Gabriel García Márquez, Carlos Fuentes and Dario Fo. Now the thought police have struck again, and it will take good luck with the law as well as thorough political organizing to beat them back to their barracks.

'OUR' DISSIDENTS

This year's *Bill of Rights Journal*—fascinating recollections by thirty veterans of the cold war. Send $2.50 to the National Emergency Civil Liberties Committee, 175 Fifth Avenue, New York, NY 10160. (212) 673-2040.

Sour Charity

The Reagan Administration tells us that there's no need for the government to support education, the arts and other activities for the public good. Business and private philanthropy, the Reaganites say, can meet the need more efficiently than the state.

It isn't working out that way. According to the Urban Institute in Washington, government support for the arts, education and various social services declined by $12.5 billion from 1981 to 1984, while private aid for those purposes increased by only $4.6 billion. And what of the record of individual foundations and philanthropies? Two case studies in *The Nation* have revealed some serious blemishes. In "The Selling of Miss Liberty" (November 9) and "The Battle for Ellis Island" (November 30), Roberta Brandes Gratz and Eric Fettmann described the commercialization and corruption of private and nonprofit agencies in what should have been a public effort to restore two national shrines. This week, Jamie Kitman begins a three-part series on the MacArthur Foundation, revealing a tangled web of deceit, self-dealing and conflicts of interest.

To update the Statue of Liberty saga: On November 22 the government-appointed centennial commission, its ranks augmented by twenty-five new members but still dominated by chair Lee Iacocca, held its first meeting in two and a half years. The meeting was called only days after the publication of Gratz and Fettmann's first article and featured a defense of the Statue of Liberty–Ellis Island Foundation's "tasteful and appropriate merchandizing" campaign. Also on the agenda was the showing of two new television appeals for donations, starring Gregory Peck and Ronald Reagan. Members then watched David Wolper's twenty-minute presentation of the second-by-second plans for next July's one-hundredth anniversary celebration.

If calling the meeting was an attempt to deflect the charges made by Gratz and Fettmann, it succeeded only in confirming their substance. Although foundation president William May had insisted that the budget for the work is still a rock-bottom $230 million, Iacocca told the gathering, "We've already used up $265 million, and I'm confident we could get another $100 million beyond that." After consistently poor-mouthing the amount of money that will be taken in by government-sponsored commemorative coin sales (at one point he said it would generate only $40 million), Iacocca expressed the hope that "maybe we'll get $160 million" from those sales. And he revealed that the budget for restoring the Great Hall on Ellis Island, pegged at $125 million, does not include an additional $75 million for other necessary work on the island.

The long-awaited master plan for the restoration of Ellis Island has yet to appear. At the meeting Iacocca announced plans to form a new subcommittee on architecture, this one composed of commission members rather than the technical experts who serve on the current advisory bodies. "We have a lot of ideas, but none of them are firm," the Chrysler executive told Fettmann. Iacocca's references at the meeting to

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the island's outer half as "a shambles" and a "piece of real estate" rekindled the fear, expressed in Gratz and Fettmann's second article, that many structures on the island will be demolished—the course promoted by Iacocca's favorite architectural adviser, John Burgee, and rejected by the previous experts.

Although the commission's roster has increased to forty-six, most of the new members are corporate executives whose companies have financial ties with the foundation. Only one of the new commissioners, Phillip Lax, has any detailed knowledge of the restoration project. Given the commission's composition, it is unlikely that the new members will monitor Iacocca's fund-raising and restoration projects.

The lesson provided by the shenanigans at the Statue of Liberty–Ellis Island Foundation and the MacArthur Foundation is that when you let the private sector do it alone, the public always pays in the end.

The Wrong Horse

If President Reagan's call for covert funding of "freedom fighters" seeking to overthrow the socialist government of President José Eduardo dos Santos in Angola succeeds, the United States will be sinking its teeth into its own tail. The recipient of the aid, Jonas Savimbi's South Africa-backed organization, Unita, is carrying out a campaign of sabotage against the facilities of U.S. corporations in Angola.

Following the repeal of the Clark amendment last July, which removed the only legislative barrier to American efforts to overthrow the government, the Administration began pressing for aid to Unita, seeking an estimated $20 million to $30 million in covert funds.

What Reagan did not mention is that attacks on Gulf Oil facilities in Angola by Unita and South African forces have endangered American lives. Savimbi has often proclaimed that the company's facilities in the Cabinda enclave are his prime target. Sales from Gulf's joint venture with the Angolan government generate at least 70 percent of the country's foreign exchange earnings, and its destruction would send the economy into a tailspin. In a 1980 interview Savimbi said he was infuriated by the partnership between Gulf and the government and promised to send the company packing if he took power.

Thus, Reagan's proposed covert aid conjures up a bizarre scenario of the Cuban troops in Angola protecting the facilities of U.S. corporations against attacks by insurgents funded by the Central Intelligence Agency and the South African Defense Force. He calls for replacing a government committed to a mixed economy and tolerant of foreign companies with a guerrilla band dedicated to booting out the most important U.S. corporation in Angola.

The thriving Gulf-Angolan consortium has proved an exemplary cooperative venture: 51 percent of the profits go to the Angolan government and 49 percent to Gulf. Since Chevron's takeover of Gulf, in March 1984, the ten-year relationship has strengthened, the company agreeing to invest several million dollars in social development projects in northern Angola. Executives of other American oil companies operating in Angola have praised the government's pragmatism and dependability. P.W.J. Wood of Cities Service Company told *The Wall Street Journal*: "The Angolans are more and more development-oriented. They aren't interested in politicizing central Africa on behalf of Cuba or the Soviet Union."

From 1982 to 1984, Angolan oil exports to the United States doubled. Trade between the two nations totals more than $1 billion a year. As Gerald Bender, president of the African Studies Association, testified before the House Foreign Relations Committee's Africa subcommittee last month:

> Angola buys more American goods than all but two or three countries in sub-Saharan Africa. American businesses have invested hundreds of millions of dollars in Angola since its independence. No American citizen or property has been touched by the government. Any destruction of American property or murder of American citizens in Angola has been carried out by South Africa and Unita.

Paradoxically, the United States is both Angola's largest trading partner and the only member of the United Nations that refuses to recognize the dos Santos government. Instead, the Administration backs an organization that is a pariah in Africa, supported only by Pretoria.

South Africa invades Angola at will, claiming to be in "hot pursuit" of guerrillas fighting for the independence of Namibia, Angola's neighbor, which South Africa illegally occupies. In fact, Pretoria seeks to bolster Savimbi's forces and keep Angola's economy in a state of turmoil. In May, two South African saboteurs were killed and one captured only 300 yards from key Gulf installations in Cabinda. Although the raiders were carrying limpet mines and incendiary bombs, President Botha's regime claimed they were merely "gathering information" on Swapo and A.N.C. guerrillas. Even by South Africa's loose standards of veracity, a raid 800 miles beyond Namibia's border is stretching the definition of hot pursuit. The surviving saboteur confirmed that the raiders' objective was to blow up the installations without regard for casualties among the 1,100 people living there, 118 of whom are Americans.

Savimbi openly acknowledges his "special relationship" with South Africa, and Pretoria wants him in power so that it can gain access to Angola's oil, which it desperately needs. Meanwhile, with the South African economy strapped, the Reagan Administration intends to assume the economic burden of funding Unita. Congress should recognize that aid to Savimbi is aid to South Africa. It should also know that the Administration's policy of focusing exclusively on the Cuban/Soviet threat will insure that South Africa's withdrawal from Angola and from Namibia is deferred indefinitely.

ROB NIXON

Rob Nixon is a South African journalist and academic living in New York City.

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MINORITY REPORT.

CHRISTOPHER HITCHENS

Harare, Zimbabwe

"The conquest of the earth, which mostly means the taking it away from those who have a different complexion or slightly flatter noses than ourselves, is not a pretty thing when you look into it too much." Thus Joseph Conrad in *Heart of Darkness*. Thus, too, the South African empire when cornered. It becomes ever more clear, the nearer one approaches the front line of apartheid, that its crisis transcends national boundaries and is quite beyond the capacity of Reaganite diplomacy to manage or even to understand. Although it suits few Western diplomats or governments to acknowledge the fact, South Africa is engaging in a war of subversion against five of its neighbors—a war that is necessitated by the depth and extent of resistance to its internal policies. The principal salients are:

§ *Zimbabwe*. Since winning independence, in 1980, after a fifteen-year war against a Pretoria-backed regime which cost at least 20,000 lives, the new republic has not been permitted to rebuild undisturbed. Not far from where I am sitting, there was a devastating explosion at 88 Manica Road in 1981, timed and placed to annihilate the entire central committee of the elected ruling party. The attempt failed narrowly, but later attacks on Thornhill Air Force Base and the Inkomo garrison succeeded in destroying huge quantities of matériel and compromising the country's defenses. In addition, assassination teams have murdered South African exiles, including Joe Nquabi, the local A.N.C. representative.

§ *Mozambique*. As if determined to prove that no agreement bearing his name or signature would endure the strain normally imposed on lavatory paper, President P.W. Botha has publicly admitted to breaking the March 1984 Nkomati accords with President Samora Machel, and to continuing his military support for the Mozambique National Resistance (M.N.R.) in its campaign of sabotage and destabilization. Botha's confession, which shocked our infinitely gullible State Department, did not surprise those who recalled South Africa's raids on Maputo or the disgusting murder of Ruth First, a leading white member of the A.N.C., in the same city in August 1982.

§ *Lesotho*. This small and vulnerable nation is surrounded by South Africa, which has been trying for years to reduce it to the condition of a "homeland." Episodes in the war of attrition have included a commando attack that killed at least a dozen civilians and an attempt on the life of Prime Minister Leabua Jonathan. There have also been continual threats to seal the borders of the country and starve it into Bantustan status. The ostensible reason is the hospitality shown in Lesotho to the A.N.C. In addition, South Africa allows the so-called Lesotho Liberation Army (L.L.A.) to operate from bases in its territory.

§ *Namibia*. Forgotten in the turmoil is the "fifth province of the apartheid state," a captive nation which even the United States regards as illegally denied its independence. Daily life under the occupation is one of appalling repression directed mainly at supporters of Swapo, whose unchallenged popularity is the reason for the refusal of South Africa to permit even a token election.

§ *Angola*. This former Portuguese colony was fighting against South African "advisers" for decades before the first Cuban set foot on the continent. It is now being systematically bombed and invaded by regular South African forces, on the pretext (credible only to the Reagan Administration) that it hosts the Swapo guerrillas who are fighting, with the full backing of international law, for the restitution of their country. The two southern provinces of Angola are a virtual free-fire zone. They are also the hinterland of a South Africa-backed group, Unita, to which the U.S. Congress is seriously considering giving money. If Namibia were independent, this contrived and vicious conflict would cease of its own accord and (so Angola has repeatedly promised) would lead to the repatriation of the Cuban troops.

A common ancestry unites South Africa's various proxy forces. All of them, like the Nicaraguan *contras*, are made up of the sweepings of deceased colonial regimes. Those who now conduct destabilizing incursions in Zimbabwe are the malcontents of Ian Smith's Special Air Services, who moved south with their weapons and cash when their "adopted" country freed itself from their rule. The orders of the M.N.R. in Mozambique were a creation of the Portuguese colonial authorities, in collaboration with old Rhodesian secret police (a story told in absorbing detail by David Martin and Phyllis Johnson in their forthcoming book on the Nkomati accords). And we have it on the evidence of Gen. Francisco da Costa Gomes, former President of Portugal and a former commander of its forces in Africa, that Unita was a wholly owned subsidiary of the settler government in Angola, and Jonas Savimbi was on the payroll. In Namibia, Botha and his Commander in Chief, Gen. Magnus Malan, act in their own name. Elsewhere, they prefer a surrogate strategy that fools nobody. The cost is very high. South Africa's neighbors are exposed and underdeveloped, and suffer from tribal and regional rivalries. To take the case of Zimbabwe alone, and not to exonerate its leaders, it is clear that South African meddling is designed to worsen the historic dislike between the Shona and the Ndebele tribes. Economically, by cutting the Chicualacuala rail link between Zimbabwe and Mozambique, South Africa has forced Zimbabwe to reroute its exports and freight at almost double the cost.

In distinguishing between authoritarian and totalitarian states, the partisans of Jeane Kirkpatrick said that authoritarian states were preferable because they kept within their own borders and left their neighbors alone. This won't wash for South Africa, which is a regional colossus and acts like one, with the support of the Reagan Administration. By backing Unita and by keeping quiet about the M.N.R., the L.L.A. and the undermining of Zimbabwe, Washington has "sent a signal" all right. The signal, perfectly intelligible at this distance, is that in the greatest battlefield for decolonization since India, the United States is not even neutral but actively on the wrong side.

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ARTICLES.

MEESE'S 'ORIGINAL INTENT'

A Constitutional Shell Game

HERMAN SCHWARTZ

The debate over whether the Constitution should be construed as the framers "intended" illustrates the way in which this Administration shapes public controversies to hide its true goals. It sounds like a problem of lofty constitutional significance, but it's really part of an extensive campaign to diminish Americans' constitutional rights by weakening the courts' protection of them.

The Administration's strategy was launched this summer, when Attorney General Edwin Meese 3d tore into the Supreme Court before the American Bar Association. He questioned the Court's sixty-year-old "incorporation doctrine," whereby key provisions of the Bill of Rights, like freedom of speech, press and religion, and various rights relating to criminal procedure are made applicable to state and local officials through the Fourteenth Amendment. Characterizing the doctrine as "constitutionally suspect," "intellectually shaky" and "politically violent," and criticizing the Court for deciding cases on policy grounds rather than on constitutional principles, he called for a "jurisprudence of original intention." He returned to this theme on November 15, charging that some judges are engaged in "a form of chameleon jurisprudence, changing color and form in each era," and that a focus on "'concepts of human dignity' has led to some remarkable and tragic conclusions."

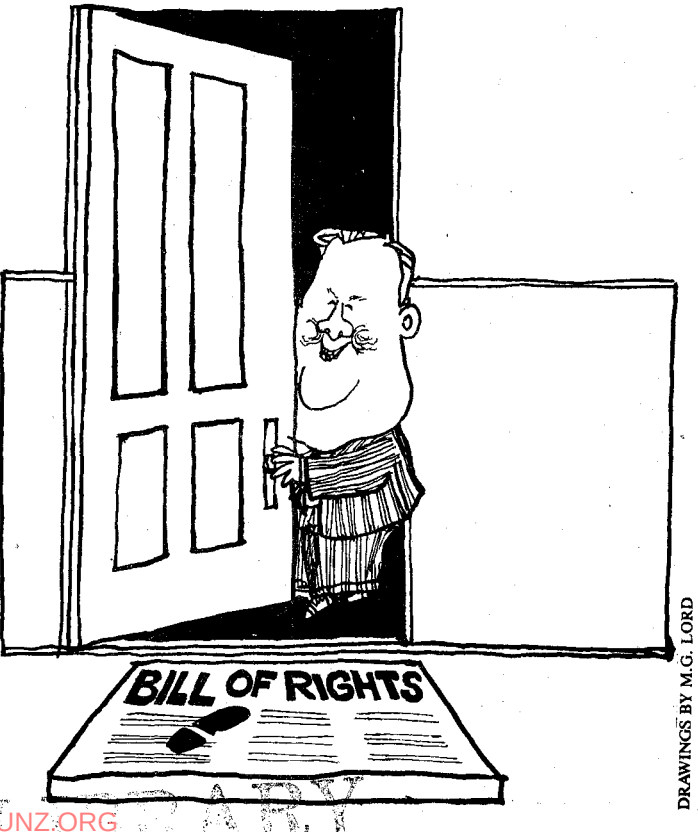
Insistence on the "original intent" is politically astute: a certain group of people drafted our Constitution, and to understand what they wrote, it seems reasonable to look to what they intended to accomplish.

This apparent reasonableness masks a hidden agenda, however, which Justice William J. Brennan Jr. spotted. In a speech at Georgetown University in October, he pointed out that upholding "constitutional claims only if they were within the specific contemplation of the Framers in effect establishes a presumption . . . against the claim," for it locks us into an era when our notions of liberty and morality were much less developed. In 1787 capital punishment for horse theft, burglary and counterfeiting was not uncommon; states had established churches and seditious libel was a crime. And though *Brown v. Board of Education* is now so sacred that even Meese finds it politic to praise it, in 1866 the framers of the Fourteenth Amendment approved of segregation in schools and transportation, the poll tax, antimiscegenation statutes and laws denying blacks the right to serve on juries. Soon after, in 1873, the Supreme Court allowed Illinois to deny women the right to practice law. Meese has cited the *Dred Scott* decision as a "tragic conclusion" of looking primarily to "concepts of human dignity." He failed to mention that Chief Justice Roger B. Taney "read blacks out of the Constitution," as Meese describes it, not on some "concepts of human dignity" but on an elaborate analysis of the framers' intent. In sentiments often echoed by Meese, Taney wrote:

> No one, we presume, supposes that any change in public opinion or feeling . . . should induce the court to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted.

On the other hand, the historical record shows that the framers of the Fourteenth Amendment had no objection to racial preferences and affirmative action. The Freedmen's Bureau Act, also adopted by the Thirty-ninth Congress, was bitterly opposed because, as one senator complained, it "gives them [blacks] favors that the poor white boy in the North cannot get."

Obviously, Meese does not try to justify school segregation or antimiscegenation statutes today, and certainly not racial preferences, even if the framers did approve of them. But if there is discretion to choose which intentions to honor and which to reject, by what criteria are those choices to be made? Except by exercising a contemporary moral and prac-



DRAWINGS BY M.G. LORD

Herman Schwartz is a professor of law at the American University Law School in Washington and a consultant to People for the American Way.

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tical judgment, how can one reject the framers' views on some things but not on others?

Meese evades those questions by distorting the historical record. Thus, despite the consensus among legal scholars that the framers of the Fourteenth Amendment accepted school segregation, he asserted in his November 15 speech that *Plessy v. Ferguson*, which upheld segregation, violated their intent.

A clear intent, however, is often hard to find. In the first place, what people in earlier eras meant when they used certain words, whether in a constitution or a law or in written or oral discourse, can rarely be grasped without a sophisticated understanding of the social and legal context of the time. The term "construction," for example, meant something to an eighteenth-century lawyer quite different from what it means today. Also, the historical materials are often confusing and incomplete. The record of the debates during the Constitutional Convention of 1787 is not a verbatim transcript but a compilation of notes by many people, characterized by editor Max Farrand as "carelessly kept," sketchy, incomplete, often inaccurate and, in James Madison's case, revised thirty years after the fact.

Moreover, historians' findings, like those in any other discipline, are constantly being revised. Twenty-five years ago, Leonard Levy wrote that the framers did not intend the First Amendment to repudiate the very repressive common law of seditious libel. His conclusions became the accepted view. Recent research, however, has led him to recognize a much greater acceptance of vigorous expression in the late eighteenth century than he had originally found. Should the Court's decisions change with each shift in the winds of scholarship?

Uncertainty as to the framers' intent results from more than the paucity of evidence or inadequate scholarship. Circumstances have changed so much since the late eighteenth and mid-nineteenth centuries that there is no way of knowing how the framers would respond to today's problems. As Justice Sandra Day O'Connor observed in *Wallace v. Jaffree*, which considered the constitutionality of Alabama's requirement that schoolchildren observe a moment of silence, there was no public school system in 1787, and "it is unlikely that the [framers or ratifying legislators] anticipated the problems of interaction of church and state in the public schools." That holds true for almost every major problem the United States faces today as a postindustrial international power of 235 million people, far different from the small, weak, fragmented society of the eighteenth century.

Ultimately, courts must depend for their historical research on the competing lawyers, whose skills and financial resources vary. Because lawyers will almost certainly manipulate what they find (historian Alfred Kelly has dubbed this "law-office history"), the judges, who are not trained historians, will have to decide between clashing, often distorted, versions.

Even if we could reliably discern the framers' intentions, why should their view govern? They didn't adopt the Constitution. They only drafted it; the state conventions adopted the Constitution. And an even larger group adopted the Bill of Rights and the Fourteenth Amendment—two-thirds of both houses of Congress and three-fourths of the state legislatures. Why aren't their views, in all their multiplicity and ambiguity, the decisive ones?

Indeed, if we are to look to the framers' intent at all, we should consider primarily how they wanted their product to be construed. Here, the record is quite clear: like most seventeenth- and eighteenth-century lawyers, they generally believed that only the text and structure of a constitution or law should be considered, not the subjective views of the draftsmen. Madison, for example, deliberately had publication of his notes on the Constitutional Convention delayed until after his death, explaining that "as a guide to expounding and applying the provisions of the Constitution, the debates and incidental decisions of the Convention can have no authoritative character."

The insistence on original intent also conceals a class bias. In November, Richard Epstein of the University of Chicago, *The Wall Street Journal*'s favorite legal theorist and one of the Administration's chief advisers, wrote that both Meese and Brennan were wrong: judicial activism is appropriate, but only to protect property rights or to prevent the redistribution of wealth. The Court, therefore, should strike down zoning ordinances, historic-preservation and rent control laws, collective-bargaining and minimum-wage laws and, indeed, the entire New Deal. "If I am right," proclaimed Epstein at a conference last spring, "the New Deal was wrong." Contrary to what Justice Oliver Wendell Holmes said in 1905, Epstein insists the Constitution does create a laissez-faire society, based on John Locke's theories of property rights. In this view, the Founding Fathers intended to lock future centuries not just into a late-eighteenth-century mindset but into a seventeenth-century view designed to protect the English propertied classes.

A pro-property bias is also reflected in Meese's suggestion, in September, that the independence given by Congress to more than a dozen Federal regulatory agencies since 1890 is unconstitutional, a view obviously drawn from Epstein's attack on the New Deal. Again peering into the framers' minds, Meese asserted that they had not intended that the agencies should be run independent of the President. Not surprisingly, the adoption of Meese's views would place the agencies that regulate business under much greater Presidential control.

We live on the threshold of the twenty-first century and must solve today's problems in accordance with today's perspectives and values. There has indeed been a continuum in our way of doing things since 1787, and it is reflected in longstanding customs and ways of thinking, in a general adherence to legal precedent, as well as in our fidelity to core ideas and values in the Constitution. As Meese has rightly said, "Those who framed the Constitution chose their words carefully." But the words they chose are rarely precise or confining, for the drafters wanted to accommodate what Thaddeus Stevens in 1866 called the "advancing progress of a higher morality," future usage and interpretation. That is how higher law was interpreted in the

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pre-Revolutionary period and the way it has been throughout our history. Although Madison, for example, thought that the establishment of the first Bank of the United States was unconstitutional, twenty years later he approved the second. The constitutional text hadn't changed, he explained, but a "construction [had been] put on the Constitution by the nation which, having made it, had the Supreme right to declare its meaning." This is equally true for the varying meanings of liberty that our courts have developed not just over twenty years but over almost two centuries, and that the nation has fully accepted.

The campaign to diminish the judiciary's role in protecting individual rights has adopted another argument based on history: a claim that the judiciary was not originally intended to be the primary protector of individual liberty. In October, Bruce Fein, a former Justice Department official and the source of many of Meese's notions, told a television audience that the Founding Fathers "sought to protect our liberties by separating out power in a variety of ways including the judiciary. . . . It was primarily by requiring a whole set of coalitions coming together before there was any enactment that liberties were to be protected." Elsewhere he has written: "The first place to get resolution or redress would be in your legislative offices or in your executive branch offices. The judiciary should be there only to police the outer perimeters which legislators and executive officials have in formulating policy."

That view turns the Constitution on its head and is historically insupportable. In the first place, if the framers relied on the separation of powers to protect individual liberties, there was no need for the Bill of Rights. Second, Fein's view ignores whatever reliable history we have. There is little disagreement among scholars that the Constitution was intended to curb what Thomas Jefferson called "elective despotism." Equally clear, eighteenth-century Americans were accustomed to courts annulling legislation in the name of a fundamental higher law, whether unwritten or written, drawn from such sources as the Magna Carta, English common law and *Dr. Bonham's Case*, in which Sir Edward Coke declared, "When an Act of Parliament is against common right and reason, the common law will controul [*sic*] it and adjudge such Act to be void." The English Privy Council struck down laws applied to the American colonies that were inconsistent with higher authority, and James Otis and John Adams challenged searches and the Stamp Act because they violated natural rights.

Furthermore, state constitutions contained bills of rights, and in the pre-Constitution period, several state courts held laws unconstitutional. In Massachusetts slavery was ruled unconstitutional in 1781 because it was inconsistent with a clause in the state's Declaration of Rights that "all men are born free and equal." Courts in Rhode Island, North Carolina, Virginia, New Jersey and elsewhere also held statutes unconstitutional, which in some cases resulted in legislative attempts to punish the judges.

Both supporters and opponents of the Constitution as-

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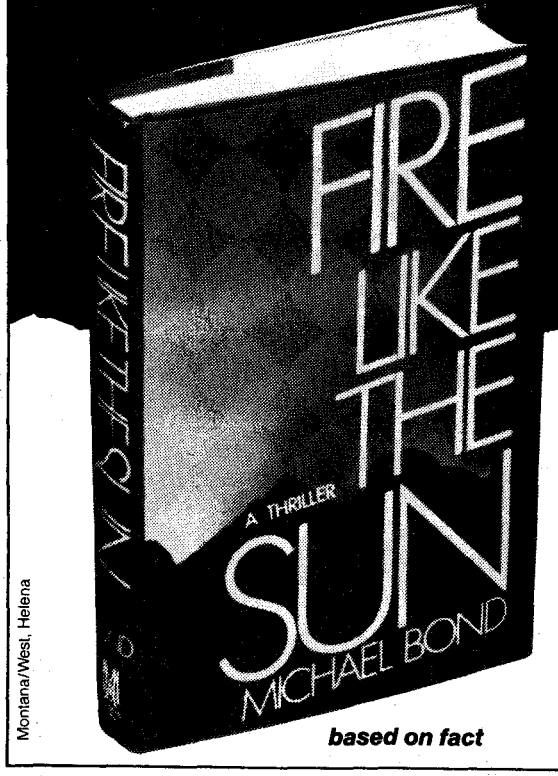

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sumed that the courts would protect individual rights. Jefferson once wrote to Madison, "In the argument in favor of a declaration of rights, you omit one which has great weight with me, the legal check which it puts into the hands of the judiciary." The acceptance of the need for such a curb is at least part of the reason that Chief Justice John Marshall's assertion of the Court's power of judicial review in *Marbury v. Madison*—in 1803, during one of the most bitterly partisan periods of our history—met with no protest.

Reliance on the elective branches of government for the protection of individual liberty is a contradiction in terms. The Bill of Rights was created to protect individuals and minorities against the popular will. As Alexander Hamilton wrote in *The Federalist* Number 78, the Constitution imposes "certain exceptions to the legislative authority" in order "to guard the rights of individuals from the effects of those ill humors" that can oppress the minority or "injur[e] . . . the private rights of particular classes of citizens by unjust and partial laws." In introducing the Bill of Rights in the First Congress, Madison noted the fear of "abuse of the executive [and] . . . the legislative power," and stressed that the purpose was to "control the majority from those acts [against the minority] to which they might otherwise be inclined." One hundred and fifty years later, Justice Robert Jackson noted this in *West Va. State Bd. of Ed. v. Barnette*, saying:

> The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to *establish them as legal principles to be applied by the courts.* [Emphasis added.]

For that purpose, an institution insulated from politics is necessary, which is why the courts were given the primary responsibility for protecting the liberties established by the Bill of Rights and why Federal judges were given life tenure and immunity to legislative reduction of their salaries.

There is also a strong whiff of hypocrisy about this right-wing argument that we should rely on the legislature and the executive to protect individual rights. This Administration has opposed almost every legislative effort to promote civil rights and civil liberties for anyone but white males. Two years ago, it fought against strengthening the Voting Rights Act and now it is lobbying against the effort in Congress to overturn the Court's ruling in *Grove City College v. Bell*, which allows recipients of Federal funds to practice discrimination. In the courts, the Administration urges restrictive interpretations of legislation, as in *Thornburg v. Gingles*, a Voting Rights Act case now before the Court. And in their administrative capacity, the Reaganites have narrowly construed Section 504 of the Rehabilitation Act, which bans discrimination against the handicapped; has unsuccessfully tried to deny the Internal Revenue Service the authority to bar tax exemptions for segregationist schools; and is seeking to gut Executive Order 11246, which requires Federal contractors to adopt affirmative action plans—to cite a few examples.

Except where the protection of individual liberties is concerned, Meese and his right-wing allies are all for judicial activism. Meese has criticized the Supreme Court for refusing to strike down an act of Congress that requires state and local officials to honor the Fair Labor Standards Act. The Administration has urged the courts to rewrite antitrust law to favor business; one Reagan appointee, appeals court Judge Richard Posner in Chicago, has been so zealous in complying that even lawyers sympathetic to business have criticized him.

In the areas of civil rights and criminal law, the Administration has consistently urged the Court to issue sweeping rulings in cases that could have been decided on narrow factual grounds, such as *Grove City* and *U.S. v. Leon*, in which the Court created a large "good faith" loophole in the rule excluding evidence obtained by an illegal search.

Meese's public effusions on criminal law are part of another right-wing strategy against the Court. This summer, he assailed as "infamous" the decisions in *Mapp v. Ohio* and *Miranda v. Arizona*, which exclude illegally obtained evidence and require police to warn suspects of their right to remain silent, respectively. This is certainly popular stuff, but it is also quite dishonest. The one area in which the Justices have given the Administration just about everything it wants is criminal procedure. The Court hasn't yet overruled *Mapp* and *Miranda*, but it has done everything short of that. The attack on the Court is obviously designed to paint it as being soft on crime so that its decisions in other areas, such as abortion and church-state relations, will lose public support.

An independent judiciary is indispensable to the maintenance of individual rights. Following the U.S. example, Israel, Germany, Greece, Italy, Austria and others have adopted judicial review as a necessary safeguard for individual liberty. One of the first targets, therefore, for those who would destroy or weaken liberty is the judges. The Founders knew that, for in the 1780s Rhode Island and other states had tried to punish judges who found state laws unconstitutional. Meese and his cohorts on the right know it, too, and they are guiding themselves accordingly. □

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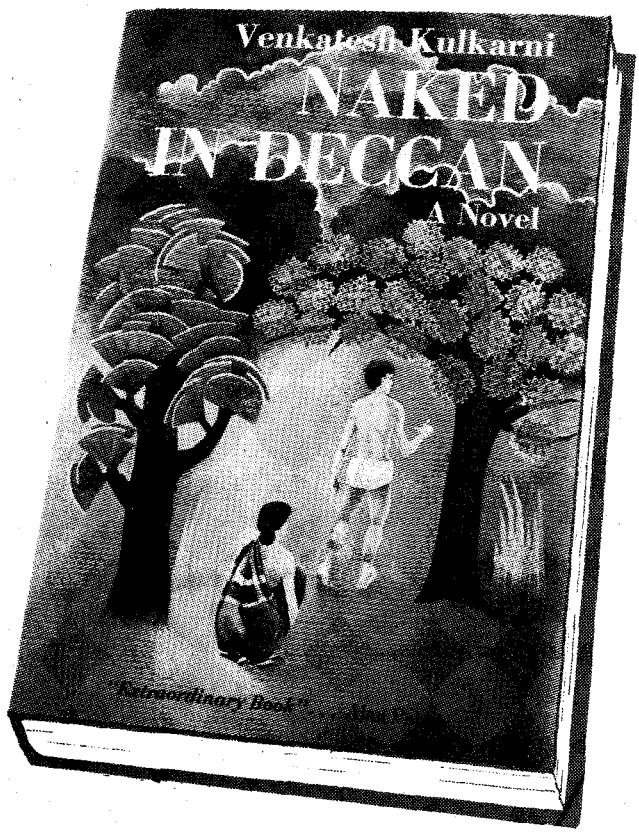

Just published in Holland and Belgium (DUTCH edition) by NOVIB (Derek Jonge, ed.). May 1986 SWEDISH language publication by Bokforlaget Agora of Stockholm (B. Holmquist, ed.). June 1986 GREEK language publication by Roes of Athens (Dr. K. Kartakis, ed.). Look for other language announcements through 1991 in these pages.

Which book has been praised world-wide by great writers and fine intellectuals such as SOUTH AFRICA's Alan Paton and ALGERIA's Abdelhamid Benhedoega; ENGLAND's Walter Allen and URUGUAY's Ana Luisa Valdes; AUSTRALIA's Center for New Literatures in English and NEW MEXICO's Rudolfo Anaya; HOLLAND's Ivo Gay and PAKISTAN'S Bapsi Sidhwa; SPAIN's Carmen Balcells and INDIA's Shiv Kumar?

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THE MUZZLED DISSIDENT

No Free Speech At Radio Liberty

KATRINA VANDEN HEUVEL

Vadim Belotserkovsky is a Soviet dissident who left his country in 1972. In May, he became a dissident in the West, this time for protesting anti-democratic and anti-Semitic broadcasts by his employer, Radio Liberty (RL), the U.S. government-funded station based in Munich that beams Russian-language broadcasts to the Soviet Union. Belotserkovsky is fighting to regain his job. His case, which has received little attention in the American press, stands as a reproach to the Reagan Administration's anti-Communist crusade and the station's policies and political views.

Originally called the American Committee for Liberation from Bolshevism, the station was established by State Department and Central Intelligence Agency officials in 1951. It began broadcasting to the Soviet Union two years later. (Its sister station, Radio Free Europe (RFE), started broadcasting to Eastern Europe the previous year.) Unlike the Voice of America, which is supposed to disseminate news and culture from an American perspective, Radio Liberty speaks from a Russian point of view.

In its thirty-four years the station has been shaken by fierce disputes among the émigrés it employs. Contrary to what most Americans think, Soviet émigrés hold a spectrum of views from left to far right, and the first staff, recruited covertly by the C.I.A., included people of various political persuasions. As Cord Meyer, who served as a C.I.A. overseer of Radio Liberty in the early days, wrote in his book *Facing Reality: From World Federalism to the C.I.A.*, "Exile leaders were so divided among themselves on ideological lines, and the different political groups were so prone to infighting, that a tower of Babel would be erected if they were left to their own devices." Documents obtained under the Freedom of Information Act in the 1970s reveal that the staff included a large number of ultra-right-wing nationalists—people who dream of a non-Communist but no less powerful Russian state and who preach Russophilia and intolerance of "alien elements"—and even former collaborators with the Nazi occupation forces in the Soviet Union during World War II.

The current staff at Radio Liberty can be roughly divided into two factions. The first, which I will call the nationalists, consists of first- and second-wave émigrés, who left the Soviet Union between the Revolution and the end of World War II. Most of them identify with the Russian Orthodox religious views and the intensely nationalist beliefs of the exiled writer Aleksandr Solzhenitsyn. The other faction represents the third émigré wave, the more than 250,000 who came to the West in the 1970s. Predominantly Jewish, most of them were born after the Revolution and were raised entirely as Soviet citizens. Although anti-Communist, they are more tolerant of liberal and even socialist values, and tend to sympathize with the Westernized political views of physicist Andrei Sakharov. Belotserkovsky belongs to this group.

In its early years, Radio Liberty served as a weapon in America's cold war arsenal. In the mid-1950s, its broadcasts denounced Communist governments from East Berlin to Moscow. It, and to a greater extent Radio Free Europe, played an inflammatory role during the Hungarian uprising of 1956, the latter broadcasting promises of Western aid.

Having been criticized for those broadcasts after the uprising, U.S. station officials informally imposed constraints that barred irresponsible statements. Nevertheless, polemics and strident anti-Communism continued to mark the broadcasts until 1971, when an even bigger scandal broke in the United States over revelations that the C.I.A. had secretly funded the two stations since 1950. Senator William Fulbright, then head of the Senate Foreign Relations Committee, led the fight in Congress to shut down the stations as a "relic of the cold war." After a long struggle, a compromise was reached.

In 1973, Congress severed the C.I.A.'s tie to the stations and established a Board for International Broadcasting (B.I.B.) to fund and oversee them. Until 1982, however, a corporate board of directors continued to run the stations. The two boards battled constantly over policy, programming and financial matters. The Pell amendment dissolved the board of directors and reconstituted the B.I.B. into a bipartisan board with nine voting members (no more than five from one political party) appointed by the President. In effect, control of the stations' policy and operations is in the hands of Presidential appointees, especially the B.I.B.'s chair.

In Munich, RFE/RL Inc. is organized as a private corporation with 1,750 permanent employees and its own president, former New York Senator James Buckley. Each station has its own director, who is responsible for program content and personnel. Radio Liberty is the leading Western broadcaster to the Soviet Union. Every week its forty-six transmitters beam 400 hours of programming in twelve languages; Russian-language programs are on twenty-four hours a day. Americans hold most of the managerial posts at the station, and émigrés work as writers, announcers, editors, producers, technicians and the like.

Administrative controls are supposed to insure that broadcasts do not violate the B.I.B.'s 1973 statement setting forth the stations' mission and the guidelines adopted in 1976 by the B.I.B. in consultation with Congress. According to the mission statement, "RFE and RL are required by law to operate in a manner not inconsistent with the broad foreign policy objectives of the United States." In 1976, when détente prevailed, those instructions meant that program material should stress "an orderly process of evolution in the U.S.S.R. . . . toward domestic and international policies more conducive to international understanding." They also directed the stations to avoid "propagandistic argumentation, gratuitous value judgments [and] un-

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supported criticism of the Communist system."

The guidelines, which many émigrés—primarily those who came to the West in the second wave—saw as yet another corrupt aspect of détente, became the subject of a bitter struggle inside and outside Radio Liberty in the late 1970s. *Kontinent*, the most influential émigré political journal, published in Munich and closely associated with Solzhenitsyn's right-wing views, attacked them in a series of articles and editorials. According to *Kontinent*, they resulted in the "ruthless censorship of any slightly fresh word or courageous thought" and promoted "broadcasts of a frankly Marxist inclination."

They also touched off infighting at Munich headquarters. In December 1975 a group of employees calling themselves the Russian Nationalists posted a letter on the station bulletin board charging that Jews had seized control of the Russian-language service. In a meeting at the station a few months later, Victoria Semenova, a producer and nationalist activist angered by new guidelines issued by the B.I.B., stated that many broadcasts lacked a "Russian spirit" and that there was a "pro-Sovietism in the majority of our programs."

Many Jewish émigrés interpreted her charges as thinly veiled anti-Semitism. But when Vladimir Matusevitch, the Jewish managing editor of the Russian program service, retorted, "Our broadcasts are not for the Russian people but for the Soviet people . . . in the Russian language," the rightists said his words proved that the station had fallen into pro-Soviet hands. Semenova fired off letters to the station's president, members of Congress and the B.I.B. She was mildly reprimanded for publicizing internal disputes, but it was Matusevitch who lost his post. He was transferred to the London bureau, despite the protests of his predominantly Jewish supporters. In a recent telephone interview, Matusevitch said he had been a victim of the anti-Semitic sentiments of the station's influential nationalist faction.

There is some evidence to support his assertion. A few months after his transfer, in an open discussion with staff members of Radio Liberty, the well-known émigré Leonid Plyusch remarked that some Soviet officials believe that "Jews are the entropy of Europe." To the consternation of some of the other participants, a nationalist activist at the meeting openly agreed. Jewish staff members responded by publicly accusing the nationalists of anti-Semitism. Semenova and others shot back that the Jewish employees were inciting hatred of the "Russian nation." By late 1977, the acrimony was so intense that the Jewish staffers sued the nationalists for libel in a West German court. The suit was unsuccessful.

By 1980 the B.I.B. was alarmed by this negative publicity and the prospect of such disputes going out over the airwaves. In November it dispatched James Critchlow, the board's planning and research officer, to Munich to monitor broadcasts and examine scripts. In his report, which became a *cause célèbre*, Critchlow documented a number of "policy violations, [including] anti-democratic, anti-Western material." While finding no "overt evidence of anti-Semitism," Critchlow reported that "there were anti-Semitic overtones in some broadcasts" and that "a common thread running through the violations is the expression of Russian nationalistic and xenophobic views." He concluded that American officials had "lost control of RL's Russian output." In a recent interview, Critchlow said that the B.I.B. took quick action after receiving his report. At a board meeting in January 1981 it instructed the station's management to end the practices he had criticized and to tighten controls over religious and historical programming. But by that time, the Reagan Administration was settling into the White House, and leading members of the B.I.B. were soon on their way out.

The main qualification President Reagan's appointees to the board seem to have is their enthusiasm for the Administration's anti-Soviet crusade. Frank Shakespeare, who served as director from February 1982 until this past October, when he left to become Ambassador to Portugal, was an executive at RKO, director of the United States Information Agency under Richard Nixon, and former chair of the right-wing Heritage Foundation. Presumably, Shakespeare, who refused repeated requests for an interview, approved an influential Heritage Foundation memorandum titled "Mobilizing the Airwaves: The Challenge to the Voice of America and RFE/RL," which was published only a few months before his appointment. "With the pursuit of détente," the memo proclaimed, "the radios have been seriously underfunded. . . . In view of the potential these stations hold for American security and policy, it is important that this trend be reversed."

President Reagan has been a fierce advocate of an activist broadcasting program. His choice for director of the U.S. Information Agency, Charles Wick, launched an ideological purge at Voice of America. In July 1982, Reagan personally

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announced a long-range program for Radio Free Europe and Radio Liberty that "will make it easier for millions of people living under Communist rule to hear the truth about the struggle in the world . . . between the forces of totalitarianism and freedom." While the budgets of social programs were being slashed, the stations' budget increased from $80.4 million in 1981 to $125 million in fiscal year 1986.

Reagan's anti-Communist crusade soon had a major impact on Radio Liberty. In April 1982 the B.I.B. provoked an uproar in the politically volatile émigré community by appointing George Bailey as station director. (The position does not require Senate confirmation.) A onetime correspondent and executive editor of *The Reporter* and a former European journalist for ABC News, Bailey, who is multilingual, had lived in West Germany since the early 1960s. As a civilian employee of the U.S. Army in postwar Germany, he interrogated displaced Soviet citizens and Red Army defectors and developed ties to the American intelligence community and to émigrés of the second wave. *The New York Times* and other publications have reported that he worked for the C.I.A.

Bailey's appointment raised two serious questions about the B.I.B.'s compliance with its own mission statement and guidelines. If the reports about his service in the C.I.A. are true, his appointment violated the 1973 legislation that severed the stations' ties to the agency. The choice of Bailey also contravened the spirit of the 1976 guidelines, which prohibit Radio Liberty from identifying "with any opposition group, political party or organization." Bailey had longstanding and well-known ties to *Kontinent*—which is funded by his personal friend Axel Springer, the right-wing West German publishing magnate—and to its editor, Vladimir Maksimov. Indeed, he was coordinating editor and de facto publisher of *Kontinent* from 1974, when it was founded, to 1982, and as such was deeply involved as a partisan in émigré politics. The journal had spearheaded the émigré campaign against the legislation and the guidelines.

Not surprisingly, Bailey quickly dismantled the mechanisms set up to insure adherence to the guidelines. A Congressional investigation this year found that he eliminated the pre-broadcast review of scripts, which had been conducted by the station management, and authorized politically sympathetic editors to monitor them in a way that, according to station officials, "favored the programs of friends while blocking those of foes." No less important, Bailey recruited his former *Kontinent* cohorts for leading positions at the station.

Bailey's policy, the investigation concluded, was "reminiscent of the fox guarding the henhouse." The result has been a series of highly controversial broadcasts. Since 1983, Radio Liberty programs have claimed, for example, that Jewish revolutionaries bear a direct responsibility for the destruction of the old regime, that anti-Semitic pogroms in the Ukraine during the Civil War should be understood in the context of Jewish support for the Bolsheviks and that Ukrainian Nazi collaborators were freedom fighters. Such broadcasts, which echo recent Soviet anti-Semitic propaganda, have been protested by Jews and non-Jews alike. Simon Wiesenthal, Harvard University Sovietologist Richard Pipes, the Anti-Defamation League and Senator Claiborne Pell, among others, have criticized the B.I.B.'s failure as an oversight agency.

But with Shakespeare at the helm, the B.I.B. was unwilling even to address the problem of broadcast violations until a barrage of critical reports in the press forced the issue last year. In fact, since 1982, the board's staff had repeatedly alerted B.I.B. members to the questionable broadcasts. James Buckley, who as president of RFE/RL was responsible for enforcing station guidelines, believed that nothing was amiss. In a recent telephone interview he asserted that Bailey's loosening of controls has "produced much richer, more responsive broadcasting."

Buckley's outlook helps explain why Vadim Belotserkovsky's protests cost him his job last May, after twelve years at Radio Liberty. Described as a "first-class nuisance" by detractors and as a "crusader" by admirers, Belotserkovsky has always been an outspoken and uncompromising man. Despite a fairly successful career in the Soviet Union—he worked as a journalist on a number of newspapers and magazines, including *Izvestiia* and *Literaturnaya Gazeta*—he was drawn, as a Jew and as a democratic socialist, into the human rights movement of the late 1960s. Unable to obtain work, Belotserkovsky left the Soviet Union in November 1972 in the wave of Jewish emigration.

Belotserkovsky's family name (he is the son of a famous Soviet playwright of the 1920s and 1930s) and his journalistic experience helped him obtain a job at Radio Liberty. He worked at the New York office until 1973, when he was transferred to Munich to write and coordinate a popular program titled "The Workers' Movement." Its themes reflected Belotserkovsky's longstanding interests. He believes that political and social change in the Soviet Union requires a mass workers' movement and has devoted his most recent book, *Self-Management* (published in the West), to the subject.

An active member of Radio Liberty's Sakharov wing since the 1970s, Belotserkovsky wrote a series of internal memorandums protesting what he perceived to be a right-wing *Kontinent* takeover of the station in the aftermath of Bailey's appointment. He also wrote a letter to President Reagan calling on him to "alter the situation at RL in the interest of the USA, of democracy and of Russia," and an article in an émigré newspaper attacking Bailey and the nationalists' growing influence at the station.

In 1984 a new outburst of anti-Semitic broadcasts outraged Belotserkovsky, particularly a program about Solzhenitsyn's latest novel, *August 1914*. As did the novel, the program portrayed heroes in czarist history, invariably ethnic Russians, as "the embodiment of the best national features," while characterizing villains, frequently Jews, as "cosmopolitans" (a Stalinist code word for Jews), with "nothing Russian either in [their] blood or [their] character."

Such broadcasts prompted Belotserkovsky to send a written protest to Buckley. When he received no reply, Belotserkovsky made his charges public in an article in *The*

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Nation [see "Undoing the West in the Soviet Union," March 16], which documented a number of antidemocratic and anti-Semitic statements in Radio Liberty broadcasts. His superiors demanded that he promise to refrain from making further public protests. When Belotserkovsky refused, he was fired for violating Section III-5B of the union contract, which prohibits station employees from pursuing any "journalistic activities . . . that adversely affect the legitimate interests of RFE/RL."

In a recent appeal to Congress and the B.I.B., leading members of the Soviet human rights movement in the West declared that "any of us would append his signature" to Belotserkovsky's refusal to desist from further criticism of Radio Liberty. "It is for the right . . . to protest publicly in such circumstances that members of human rights movements . . . are fighting." For such protests, "people in those countries are also deprived of jobs and subjected to repression."

Many émigrés point out that other employees had been critical in public prior to the adoption of Section III-5B without even receiving a reprimand. Moreover, none of the employees responsible for the disputed broadcasts have been disciplined. Bailey was eased out as director at the end of March, but he remains a consultant to the station on full salary.

When B.I.B. chair Shakespeare arrived in Munich last April for a board meeting, he allegedly told Buckley, referring to Belotserkovsky, "Get rid of that S.O.B." Some radio officials think that Shakespeare wanted to get even with the in-house critics, and Belotserkovsky was an easy target. The spirit of intolerance appears to be spreading at station headquarters. Three of the employees who signed a letter to Buckley last May supporting Belotserkovsky were issued formal reprimands in October and may be fired.

Belotserkovsky is appealing his dismissal in a Munich labor court. The proceedings, which will resume next February, are expected to be lengthy, and his salary will be terminated on December 31. The father of a college student, he has no other means of support. One B.I.B. official thinks he has "a better than 50 percent chance." Whatever the outcome, it is hard to dispute Belotserkovsky's own bitter comment on the case: "There, in the U.S.S.R., I was without work because of anti-Semitism; and here, because I protest against anti-Semitism. Is there such a great difference?"

Belotserkovsky's case raises several important questions. Buckley's approval of questionable broadcasts at Radio Liberty makes his recent nomination to a Federal judgeship even more controversial. Then there are the larger questions of the objectives and content of U.S.-funded broadcasts to Communist countries. The latter issues involve not only Radio Free Europe and Radio Liberty but also two newly created stations: Radio Martí, broadcasting to Cuba, and Radio Kabul, to Afghanistan. Even assuming that such stations play a legitimate role in promoting American values, the Reagan Administration's management of Radio Liberty dramatizes the danger that émigré-staffed stations may become fundamentally "un-American" in their ideology and broadcasts. □

Philanthropy

(*Continued From Front Cover*)

Although alarming, the directors' behavior might have been expected. Tell a group of unprincipled Chicago businessmen to turn your billion-dollar company into a charity upon your death to avoid taxes, but don't tell them how you want them to spend the charity's money. That's what John MacArthur did. Factor in a politically interested state's attorney and an executive branch that thinks charities, like businesses, should be run on the honor system. The result: a group ineluctably poised to take its place alongside such legendary Chicago institutions as the Daley political machine, the Cook County judiciary, Continental Illinois bank and John Cardinal Cody's diocese. When MacArthur died, in 1978, his boys ran his charity the only way they knew how. The Chicago School of Philanthropy was open for business.

The Old Man Disposes

Racially prejudiced, stingy to a fault and notoriously eccentric, John MacArthur was not unlike your average billionaire. He loved to make money, but he hated to spend it. "My ass fits just fine in a coach seat," the 78-year-old MacArthur told a visitor as he served him a slice of his sixty-eighth-birthday cake, preserved in a freezer since 1965 along with sandwiches he was saving and other pieces of cake from birthdays gone by.

A high-school dropout, the youngest brother of playwright Charles MacArthur and cousin of Gen. Douglas MacArthur got off to a slow start, running two businesses into the ground by 1935. That was the year he took over the moribund Bankers Life and Casualty Company of Chicago by assuming its $2,500 debt. His family thought he had made another mistake; actually, it was a breakthrough.

Selling health- and accident-insurance policies by direct mail—an innovation at a time when most insurance was sold on the golf course—MacArthur did for insurance what Henry Ford had done for the automobile. "Why not just take what a man's got in his pocket?" he once said. Aimed at the urban working class, nationally advertised and available for $1 a month, Bankers Life policies brought basic insurance to millions, and millions to MacArthur. Presciently, he invested his profits in New York City and Florida real estate during the 1950s and 1960s. As the market for both boomed and as additional investments in hotels, ranching and oil wells paid off, the company's already substantial capital accumulation became one of the biggest in the United States. When MacArthur died, at the age of 80, Bankers Life, which held almost all his assets, was worth more than $1 billion. MacArthur, who conducted his business out of a hotel coffee

Jamie Kitman is a recent graduate of the Northeastern University School of Law. *This article was prepared, in part, with grants provided by the Fund for Investigative Journalism and the Funding Exchange/National Community Funds.*

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shop during his final years, was the sole shareholder. He was also the second-richest man in America.

Charity may be eternal, but it's easy to forget that the American foundation is a peculiar creature of the modern era, born with the adoption of the personal income tax in 1913. Under Federal tax law, wealthy people may avoid the taxes they never used to have to pay by creating charitable trusts or foundations. The policy is grounded in the belief that the public interest is advanced just as surely by a trust's largesse as it is by tossing the dearly departed's portfolio into the Federal treasury to support, briefly and anonymously, the activities of government.

No one has put the theory to an empirical test yet. Arguably the $4 billion distributed each year by all major American foundations combined would be better spent on child nutrition and immunization programs. Of course that wouldn't sit well with museum directors, professional grant-writers and think tank theoreticians, among the many who would take it on the chin if foundations were to shut down tomorrow. More important, such spending would amount to a fundamental redistribution of wealth, which is one thing foundations most clearly are not about. Although an improvement over feudal inheritance schemes, the foundation "alternative" to taxation emerges from a similar desire to keep accumulated wealth intact. Like the great philanthropies of yore, the modern foundation offers its creator the possibility of immortality. Allowing the wealthy benefactor to name the foundation's directors and its mission is like chartering a private legislature that spends the public's money—the sum the government would have otherwise received in taxes—where, how and for whatever reason it sees fit. Not surprisingly, foundations created by the rich have tended to support passions, concerns and individuals known to the rich.

John MacArthur was a likely candidate for the new philanthropy. In life, he was never much for charity. "Leave me alone! I'm not going to do it. I don't care if it's good; I know it's good," he would loudly remind William Kirby, general counsel to Bankers Life and a longtime associate, when Kirby approached him on behalf of a worthy cause. But MacArthur was afflicted by the phobic aversion to tax paying that one often observes among the wealthy. Just the thought of his life's work being dissolved upon his death to pay more than half a billion dollars in estate taxes made him physically ill. Drafting a trust agreement with Kirby's help, MacArthur hoped to forestall that possibility. He would leave it all to charity. As he told Kirby at the time, "Well, then, I'm the most charitable son of a bitch you know."

Under the terms of the agreement, MacArthur's shares of Bankers Life stock would be transferred to the John D. and Catherine T. MacArthur Foundation, a charitable trust set up in 1970 but penniless until this gift. MacArthur left no further instructions, telling Kirby, "I figured out how to make the money. You fellows will have to figure out how to spend it." MacArthur understood the bequest would not be taxed, but he was, according to an employee, evidently unaware of a 1969 amendment to the Internal Revenue Service code that, in effect, required the sale of 80 percent of a foundation's active business assets—known as "excess" holdings—within five years of its creation.

The theory behind the rule is obvious. An organization that owns and operates for-profit concerns has no business taking advantage of the tax-free treatment afforded charitable institutions. The five-year grace period is granted so that a newly formed charity can ready its assets for a favorable sale. A charitable organization that fails to divest active business assets within the time allowed will incur severe penalties, including loss of its tax-exempt status. In the case of the MacArthur Foundation, a large part of Bankers Life would have to be sold by December 1983, or—barring an act of Congress—the foundation would face a minimum mandatory penalty of roughly $75 million.

Less certain than the terms of the tax code is whether William Kirby knew of the divestiture requirement when he helped design MacArthur's trust. We do know that the document named six directors to the foundation's board: Paul Doolen, a director of Bankers Life as well as its former president and chair emeritus; Louis Feil, the MacArthur employee who tended the old man's real estate holdings; Catherine T. MacArthur, his onetime secretary and second wife; J. Roderick (Rod) MacArthur, his son by his first marriage; Paul Harvey, the right-wing ABC radio personality whose daily programs Bankers Life sponsored for twenty years; and Kirby himself. By May 1978, Feil had been replaced by Robert Ewing, president of Bankers Life. Catherine MacArthur was unable to attend board meetings; she had advanced brain cancer and died in 1981.

As directors of a charitable trust, the persons named by MacArthur had three legal, not to mention ethical, obligations: to conserve the foundation's assets, to complete the sale of excess business holdings within the five-year grace period and to distribute funds in accordance with the law. Careful examination of public and foundation records reveals that through greed and ineptitude, they failed to perform all of these duties.

Conflicts of Interest

When John MacArthur died, the foundation bearing his name received a certificate for 10 million shares of Bankers Life stock, a single sheet of paper representing more than $1 billion. The directors' duty was to dispose of the active holdings on favorable terms, within the five-year grace period. Prior to such sale, their legal responsibility as caretakers of the assets was at a minimum to preserve the assets' value and to ready them for sale. This was a seemingly effortless task, since the assets included an insurance company entering its fourth profitable decade and copious slabs of prime real estate in New York City and Florida.

Yet the directors set about their duties with a distinct lack of enthusiasm. Eleven months passed before the transfer of shares to the foundation was effected. As a result, the divestiture deadline was postponed from January 1983 to December, and the foundation was prevented from making any donations for close to a year. In the interim, Kirby, who was named general counsel to the foundation and elected

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the board's vice chair and secretary at its first meeting, circulated a memorandum outlining alternatives to divestiture. Nothing came of these. Among the peculiar schemes proffered was turning the foundation into a research hospital, a quasi-charitable "operating foundation" that would enjoy beneficial tax treatment without necessitating the divestiture of Bankers Life.

At the board's meeting on January 3, 1979, Rod MacArthur offered to explain why the other directors were not diligently pursuing the sale of Bankers Life. With the exception of him and his father's ailing widow, he said, all of them were drawing salary or other income from the insurance company. A classic conflict of interest existed, MacArthur said, as Bankers Life officers and directors were being asked in their capacity as foundation directors to oversee the disposal not only of the company for which they had toiled much of their professional lives but of their current meal ticket as well. He asked Doolen, Kirby and Ewing to resign from one of their two jobs.

Rod MacArthur had no special power in the foundation by virtue of his relationship to John MacArthur. Father and son had been estranged for many years, and although they'd reconciled before John MacArthur died, the old man passed over his son (and daughter) in his will. The younger MacArthur was no pauper, though. After several unsuccessful goes at making his own fortune (including a poorly timed attempt to sell sound-sensitive multicolor lamps, known as Kharma Kolor Organs, just as the psychedelic era fizzled), MacArthur struck it rich in the 1970s with the Bradford Exchange, an international brokerage house for commemorative collector's plates, which grossed $100 million a year. In 1980 he purchased Hammacher Schlemmer, a specialty store and mail-order house purveying expensive gadgets and novelty items. He also established a trust, the $25 million J. Roderick MacArthur Foundation. Referred to in philanthropic circles as "Little Mac" (next to his father's "Big Mac"), it is of a decidedly liberal bent.

The directors confidently refused to heed MacArthur's suggestion that they resign. Doolen (now 80 and retired from the board) recalled for those assembled at the January 3 meeting, "Rod's father intimated to me [what] he wanted done; namely, to have the people closest to him run the foundation until they died."

Doolen's estimate of John MacArthur's testamentary frame of mind rang true. No one close to the old man was surprised that he left no instructions as to how he wanted his money spent because no one ever thought he wanted his money spent. In his mind, the foundation was there to keep his money machine going, while distributing just enough of its profits to satisfy the Federal government, which requires that charitable trusts distribute at least 5 percent of their total value every year. The Chicago directors shared the elder MacArthur's vision. They weren't there merely to administer the program; they were an integral part of the program.

But while the wishes of a person creating a trust will usually determine its disposition, courts won't uphold trusts with illegal or immoral purposes. Quite sensibly, the

Alexander Cockburn on the PRESS.
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founder of a lasting charity is not permitted to decree acts that may jeopardize the trust's assets and the public's interest in them. And, of relevance here, a founder cannot authorize directors to maintain positions in which their individual interests conflict with those of the public they supposedly serve. The Chicago directors knew this. Rod MacArthur knew they knew it. But he also knew that with the 70-year-old Kirby, he was up against a crafty sharpshooter who would engage him in a court fight that would be long, expensive and nasty. So instead of fighting, MacArthur negotiated an informal compromise under which the foundation would appoint additional directors. New faces would remind the Chicago fraternity of its duty to the public, MacArthur hoped. Warming to the idea, Kirby suggested his steady date, advice columnist Ann Landers.

At its meeting in May 1979, the board named seven new directors, all renowned for their achievements outside the insurance business: John Corbally, president emeritus of the University of Illinois; Gaylord Freeman, retired president and vice chair of the First National Bank of Chicago; Murray Gell-Mann, Nobel laureate in theoretical physics at the California Institute of Technology; Jonas Salk, inventor of the polio vaccine; Edward Levi, former U.S. Attorney General and president emeritus of the University of Chicago; Jerome Wiesner, then president of the Massachusetts Institute of Technology; and William Simon, Secretary of the Treasury in the Ford Administration. Corbally was named interim president of the foundation, until a committee he chaired could choose a full-time head.

Unfortunately the accountability and oversight the expanded board was supposed to provide never materialized. With two exceptions, the distinguished outsiders from the halls of government and academia chose not to concern themselves with the Bankers Life divestiture. The luminaries' decisions may have been well intentioned—perhaps based on a fundamental recognition that billion-dollar liquidations were not their bag—but they were fateful. Within weeks of their appointment, the new directors had placed responsibility for the divestiture and oversight of Bankers Life back in the hands of the self-interested Chicago businessmen whose actions (or lack thereof) had necessitated expanding the board in the first place.

The new foundation board lost its first measure of oversight at a June 1979 meeting when it named directors to the Bankers Life board. Being the sole shareholder, the foundation was entitled to name anyone it wished. Given the impending sale of the company, persons of undisputed credibility and undiluted loyalty to the foundation, without the faintest tinge of a conflict of interest, were to be desired.

Yet among the five men the foundation's board elected was Bob Ewing, the president of Bankers Life. Harold Geneen, former president, chair and chief executive officer of I.T.T., has written of the folly of allowing corporate directors to oversee their own performance as officers. Geneen contends that it is not reasonable to expect a director to evaluate his own work as an officer candidly, much less to hand himself a pink slip, as a director must be prepared to do. Still less reasonable is the position Ewing was placed in. As a Bankers Life director he was obliged to oversee his performance as Bankers Life president; as a foundation director he was bound to oversee his performance as a Bankers Life director. Other choices were little better. Doolen and Kirby both drew income from the company and thus had interests inimical to the sale. The difficulties with the two other appointees, Gaylord Freeman and John Corbally—both foundation directors—would become apparent in the fullness of time.

Helping Themselves

As ill conceived as the Bankers Life board appointments were, the foundation board hadn't yet lost all of its chestnuts in the fire. It still had the power and the duty to dispose of Bankers Life—that is, until it chose to delegate primary responsibility for the sale to a "finance committee." Composed of four directors, the committee included some familiar personalities, among them Kirby, Corbally and Freeman. Edward Levi was also named to the committee, but by most accounts his participation was slight.

With the Bankers Life board running both ends of the show, an effective information monopoly was created. The other foundation directors were exposed only to such facts as the Bankers Life axis provided. No doubt that suited many of the outside directors; they didn't understand insurance anyway. But no special training is required to spot conflicts of interest, and those were rife. Take, for instance, William Kirby. Between his work for the foundation (director, board vice chair, secretary, general counsel and finance committee member) and his work on behalf of Bankers Life (director and general counsel), he was wearing so many hats that he might have been mistaken for a haberdasher. But he and his compatriots certainly didn't confuse themselves with any ordinary charitable trustees, whose duty runs only to the public. Rather, they promptly embarked on a campaign of self-aggrandizement. Among the highlights of the Bankers Life cabal's program of cavalier self-dealing:

§ The dual directors began paying themselves fees as Bankers Life directors, ranging from $15,000 to $20,000 per year, in addition to the fees they drew as foundation directors and the salary that some drew as officers in the company.

§ The Bankers Life board voted to pay Doolen a $204,000 retirement bonus, although he had not worked for the company for three years.

§ The Bankers Life board voted to triple Ewing's 1978 compensation to more than $300,000 per year, while quadrupling his pension benefits from their 1976 level to $187,000 a year by 1982. As a foundation director, Ewing received in excess of $125,000 from 1978 to 1982. His wife, Nancy, received in excess of $220,000 as assistant secretary to the foundation between 1981 and 1984.

§ The Bankers Life board awarded Ewing a "golden parachute," worth close to $1 million, by guaranteeing him three years' salary upon termination of his employment, a foreseeable event following the sale of a large company.

§ The foundation paid Kirby more than $340,000 in fees for his part-time work as a director from 1979 through

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September 1983; $97,000 for legal services between 1979 and 1983; and an additional $85,000 in expenses and benefits. The law firm in which he was a partner received nearly $360,000 from the foundation and an additional $200,000 from Bankers Life before Kirby left it in 1980. Subsequently, Burke, Griffin, Chomicz & Wienke, for whom Kirby acted as "of counsel" until 1983, was paid over $1.9 million in fees by the foundation and an additional $200,000 by Bankers Life. Kirby drew additional sums as a director and general counsel to the Research Retirement Fund, a smaller foundation set up with the assets of MacArthur's Citizens Federal Bank.

§ Bankers Life transferred more than $600 million in corporate custody accounts to the First National Bank of Chicago, where Freeman, as a director and former president, maintained an office and secretary at bank expense. The foundation was not notified. Bankers opened an additional $55 million in cash accounts at First National following Freeman's appointment. For himself, foundation records indicate, Freeman received a whopping $271,619 for his part-time services in the four years beginning June 1979.

§ All of the finance committee members, including two dual directors, awarded themselves a healthy $1,000 a day plus expenses for their committee work.

§ John Corbally became one of the highest-paid foundation officers in America, receiving in excess of $630,000 from the foundation from January 1980 through September 1983. That included the use of a $325,000 condominium on Chicago's posh Gold Coast, purchased by the foundation at his insistence shortly before the search committee he headed as interim president recommended that he be retained permanently in the position. According to foundation documents, Corbally paid himself close to $15,000 more than authorized by the board in 1981 and over $26,000 more than the amount approved in 1982. In 1982 and 1983, without the board's knowledge, Corbally reimbursed himself and his wife for first-class airfare back and forth between Chicago and the Corbally summer retreat on Whidbey Island, in Washington State. During that two-year period, Corbally, who received a full-time salary, spent eighteen weeks on Whidbey Island. Meanwhile, from January 1980 through September 1983, Corbally received more than $65,000 for his part-time service as a Bankers Life director.

The Gold-Plated Board

Other board members received excessive compensation, too. Among directors of the nation's largest foundations, MacArthur board members were the highest paid by far, receiving roughly five times more than Ford Foundation directors as a percentage of the fair market value of their respective foundations' holdings. The stipends of some MacArthur directors exceed those paid in industry, where large fees might not raise the same ethical issues. According to a January 23, 1985, survey in *The Wall Street Journal*, the median compensation for a director's services to financial companies, including attending board and committee meetings, was $15,000 in 1984. What, then, is one to make of fees received by Jonas Salk, who, foundation records show, received $61,500 in 1980; or those paid Murray Gell-Mann, whose part-time service netted him $72,000 in 1981? An October 7, 1982, memorandum written by Corbally and addressed to the board provides guidance:

> Each element of our [compensation] pattern—retainer, meeting fee and committee fee—is unusually high for foundations. Not only do we pay the same fee for a committee meeting as we do for a board meeting, we also define long-distance travel as meeting days.

When visited recently at his office in Chicago's historic Marquette Building, which the foundation owns, Corbally defended the salaries. Acknowledging that the foundation's directors are among the highest paid in the history of American philanthropy, Corbally observed "a certain lack of reality in Rod's view that a foundation be run by people who donate their time." High fees, he said, were essential to "attract the very best people that we can. . . . If you had just walked out across the street to Gaylord's [Freeman's] office [at First National Bank of Chicago] and said, 'We'd like to hire you to run a divestiture [of Bankers Life],' he would have laughed."

After earlier attempts to reach Kirby had failed, I visited the foundation. But Kirby was unavailable to discuss his compensation that day; Ted Hearne, a public relations consultant to the foundation, told me he was vacationing in Florida. Besides, Hearne said, "he doesn't speak to the press about these things."

It's easy to see why. In a 1984 interview he told Joel Achenbach, a reporter for *The Miami Herald*'s *Tropic* magazine, "I could earn a lot more if I was out of here. . . . Any fucking thing I've done for them is worth [the money]." And, as he reminded Achenbach, "At 73 years of age you're not supposed to work full time." □

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BOOKS & THE ARTS.

Going for Broke

PETER SCHRAG

THE DIVORCE REVOLUTION: The Unexpected Social and Economic Consequences for Women and Children in America. *By Lenore J. Weitzman. The Free Press. 504 pp. $19.95.*

For depressingly sound reasons, the feminization of poverty is one of the central concerns of liberal politics in the age of Reagan. To understand why, you have only to look at the figures—the cuts in welfare and food-stamp programs on one hand, the increase in the percentage of poor families headed by women on the other. While the proportion of the nation's elderly who live in poverty has sharply declined in the past decade, the percentage of children who live below the poverty level has increased by almost half—from 15 percent to 21 percent.

But as Lenore J. Weitzman has pointed out in a series of important studies, and as she makes abundantly clear in *The Divorce Revolution*, you can't blame this one entirely on Reagan. Equal responsibility lies with the no-fault divorce laws enacted in the past fifteen years, with the lawyers and judges who administer and interpret them and with the feminist assumptions about independence and equality that shape those interpretations.

The vast majority of the country's poor and near-poor children are not the out-of-wedlock offspring of teen-agers but the children of divorced mothers who once had it better. It would not be stretching things to say—though Weitzman doesn't say it—that the treatment of women and children in divorce is one of the great embarrassments of the modern feminist movement. Writers like Betty Friedan recognize that newly divorced women with young children, or middle-aged women who have devoted their lives to being housewives and mothers and have never started a career, are often simply not capable of attaining the economic independence that the divorce laws now presume. But for the most part, the women's movement has yet to grapple with the problem.

Weitzman, who teaches sociology at Stanford University, has put together a compelling case for what she calls "the unexpected social and economic consequences" of the divorce reforms that began in the early 1970s. Working largely with data from California, where this much-copied divorce revolution began, she shows how the principle of no-fault, no-consent divorce, while eliminating much of the hypocrisy and acrimony of the old divorce laws, has fundamentally weakened women's bargaining position. The principle of equality in property settlements does not produce equality in practice: the vast majority of divorces quickly improve the economic position of the husband and seriously reduce that of the wife and children, who remain with their mother in more than 90 percent of cases. In most jurisdictions, it's no longer possible for a woman to refuse her husband a divorce until he gives her a favorable property settlement, much less hold him up, as Hollywood used to have it, for "everything he's got." In states like California, anyone can get a divorce, whether or not his or her spouse agrees to it.

But that's only the beginning. Weitzman demonstrates how the new laws, under the banner of independence and equality, fail to provide anything remotely approaching adequate child support—even when support orders are complied with, which in more than half the cases they are not. Further, in attempting to divide the assets of the marriage "equally," the law, which once tilted toward preservation of the family home for the sake of the children, now virtually compels its sale in order to let the man "cash out." At the same time the husband's less tangible assets—good will in a business, a professional degree or license (often gained with the wife's income)—are either undervalued by judges or neglected altogether. Such property settlements—in which the interests of children have no legal standing whatsoever—usually leave women and children far worse off than they were in the bad old days.

The figures here are dramatic. Using Bureau of Labor Statistics indexes for what it costs families of varying sizes to maintain an adequate standard of living, Weitzman concludes that after the first year, the standard of living of divorced men improves by 42 percent while that of divorced women declines by 73 percent. Noncustodial parents—read fathers—are rarely required to pay more than 25 percent of their after-tax income in child support, or more than 32 percent in child support and alimony combined. Many of the judges Weitzman interviewed believe that things shouldn't be made too tough on the men, lest they lose their motivation to earn a living. (Despite myths to the contrary, alimony was only awarded in a minority of cases, even under the old laws. Under the new laws, not surprisingly, it's become even rarer. The women, however untrained, are supposed to go to work.)

What's more, since the new laws don't allow for the finding of fault, and since they frequently establish joint custody as a preferred option, the husband's lawyers can reduce child support and alimony payments for their client by threatening a custody fight. In theory, the threat could work both ways, but since women are almost invariably more vulnerable, both economically and in their emotional need to retain custody, it's the man's bargaining position that is enhanced. As a result women often trade away major financial benefits for fear of losing their children.

Weitzman doesn't advocate a return to the old divorce laws, but she does propose some obvious changes: spouse and child support awards founded on an attempt to achieve parity in standard of living between a man and his former wife, particularly where minor children are involved; more rigorous enforcement of support awards through assignment of wages and, where necessary, a willingness to send nonpayers to prison; recognition by judges that the needs of the divorced wife and children are at least as important as those of the husband; allowance for the fact that for many women, particularly older women, the notion of independence in a new career is cruel nonsense; and, perhaps most significant, a return to the presumption that the primary caretaker of the children during the marriage will remain the primary caretaker after divorce. That would eliminate most of the temptation to threaten custody challenges to reduce support payments and, even more important, end the post-

Peter Schrag, editorial page editor of the Sacramento Bee, *has written frequently about the effects of California's divorce laws.*

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divorce fights caused by de jure joint custody awards to parents unable to cooperate even for their children's sake.

And yet it is unlikely that these reforms will be made, despite the new emphasis, in California and nationally, on raising minimum levels of support (thanks in part to Weitzman's own work) and on instituting more effective ways of collecting payments. (Here conservatives like Margaret Heckler, often with the aim of reducing the need for welfare, have been more active than liberals.) Weitzman recognizes that the failure to meet the needs of children in no-fault divorce in the past fifteen years is partly due to the narcissism of the "me generation." Still, one wishes she had placed more emphasis on the larger national lack of concern for children. Between 1960 and 1980, the number of children aged 5 to 14 in America declined from 19 percent to 15 percent of the population, and the percentage of white children from 17 to 12 percent. That's a decrease of almost one-third. If one also considers the growing number of single-parent households—most of them headed by divorced women who don't have much time or energy to devote to politics—one begins to get a sense of the extent to which the political clout of families with children has declined. Those facts don't in any way detract from Weitzman's powerful book, but they do indicate how difficult it will be to end the scandal that she has done so much to bring to our attention. □

Magnifying Lens

ROSETTA COHEN

THE LAMPLIT ANSWER. *By Gjertrud Schnackenberg. Farrar, Straus and Giroux. 83 pp. $12.95.*

Gjertrud Schnackenberg's *The Lamplit Answer* is the first full-length collection by a young poet whose work has appeared widely in recent months and who has been much praised as a gifted stylist since the publication, in 1982, of her chapbook *Portraits and Elegies.* Tightly formal and consistently elegiac in tone, Schnackenberg's earlier collection showed her to be a poet of enormous control, capable of working small miracles with cadence and rhyme. In this recent volume Schnackenberg seems to have made an attempt to move beyond the limits of subject and style on which her reputation is based. A number of long poems appear here, including a historical portrait in free verse and a lengthy fairy-tale parable. The selection also contains a beautiful elegy to the poet's father, a pair of humorous pieces and a series of light, less successful, love poems.

But despite the broadened range of subject, the essence of a good Schnackenberg poem is still quite the opposite of far-reaching. In fact, much of the delight one derives from her work comes from its capacity to create a limited, ordered universe that transcends, by way of intricate detail, the larger context of the subject itself. The most imposing historical figures—Chopin or Darwin—are reduced to the domestic intimacies of tea sets, backgammon and naps "beneath a *London Daily* tent."

It is this talent for creating small, intricate worlds that seems to place Schnackenberg within a tradition that has less to do with a particular poetic mode than it does with the nineteenth-century novel. There is a Jamesian preoccupation here with the nuances of small gestures and quiet moments. And the parallels to James or Austen or Eliot are reinforced by the numerous nineteenth-century settings in which her dramas are played out: the salon, the garden, the gentleman's study.

Nowhere is the novelistic quality of Schnackenberg's work better exemplified than in the most successful poem in the book, "Kremlin of Smoke." The poem is composed of a series of fictional frames from the life of Frédéric Chopin. Using fragments from the composer's letters and journals, Schnackenberg creates eight subtly cadenced "études" in which we see Chopin alternately as a young child and as a 20-year-old exile from Warsaw during the Russian invasion of 1831. The opening poem in the series is set in the Faubourg Saint-Germain, where the protégé holds court amid the beau monde:

> The swan's neck of the teacup, her black vizard
> Plunged underwing, conceals her face like a modest cocotte
> Who can't bring herself to look up at the honored guest,

Rosetta Cohen is a poet living in New York City.

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As the silver hammer of the tea service practices
Chings in runs of triplets, and the tea steam hangs
Phantom chrysanthemums on long, evaporating stems
In the air of the winter apartment. The guests,
Having gathered for games, for mimicries,
For gossip's intricate, expensive inventions,
Crowd toward the pianist who, leaning forward,
Clasps his hands, like a child's prison for butterflies,
To begin a tale, perfected in his room, of his
Reception on a tour in the South, where they had hired
A sedan chair with servants to bear him to the theater,
"Like a captured king from a remote, Saxon metropolis,"
And then killed him in the reviews—a smashing joke,
And his hostess snaps her fan shut when she laughs,
In the city of slaves to mirrors, of rivalries
Championed for less than a day by charlatans,
Of politics lending heat to the rented rooms
Of exiled virtuosos, and of cholera warnings affixed
To the posts of the streetlamps, whose heads
Flare with fever from here to the outermost districts.

The catalogue of ironic detail here, most of it rendered in a single breathless sentence tied together with internal rhymes, is wonderfully effective at conjuring up Chopin's own imagined ambivalence to the scene—a mixture of egocentric pleasure and quiet unease.

Schnackenberg's novelistic style also works well with more personal, lyrical subjects. In the last poem of the collection, "Supernatural Love," she deflates her perspective literally to the nearness of a magnifying lens:

My father at the dictionary-stand
Touches the page to fully understand
The lamplit answer, tilting in his hand

His slowly scanning magnifying lens,
A blurry, glistening circle he suspends
Above the word "Carnation." Then he bends

So near his eyes are magnified and blurred,
One finger on the miniature word,
As if he touched a single key and heard

A distant, plucked, infinitesimal string,
"The obligation due to every thing
That's smaller than the universe." I bring

My sewing needle close enough that I
Can watch my father through the needle's eye,
As through a lens ground for a butterfly.

Through the rigid symmetries of the tercets, Schnackenberg conflates the love of parent with the love of Christ, and the simplest actions—the child embroidering, the father searching out the Latin root of a word—become transcendent by way of the child's sudden, tiny self-inflicted wound:

I twist my threads like stems into a knot
And smooth "Beloved," but my needle caught
Within the threads, *Thy blood so dearly bought*,

The needle strikes my finger to the bone.
I lift my hand, it is myself I've sewn,
The flesh laid bare, the threads of blood my own,

I lift my hand in startled agony
And call upon his name, "Daddy daddy"—
My father's hand touches the injury

As lightly as he touched the page before,
Where incarnation bloomed from roots that bore
The flowers I called Christ's when I was four.

Almost all the best poems in *The Lamplit Answer* deal in one way or another with this kind of intense scrutiny. There is a piece about the artist Ivan Generalić, for example, whose painting style is characterized by the tight, hard-edged precision of the miniaturist. Another shows an aging Darwin, weary at last of a lifetime spent looking into "beetle-jaws" and "bivalve hinges." Unfortunately, however, the collection is not entirely devoted to poems at close range such as these. One whole section of the book, which includes mainly love poems, falls flat. Here, the rhymes suddenly become predictable, and the glorious detail is replaced by bathos or coy banter:

Dear love, though I'm a hopeless correspondent,
I found your letter habits lacking too
Till I received your card from H.-lulu.
It made me more-than-slightly-less despondent
To see how you transformed your ocean swim
Among dumb bubble-blowers into meters

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And daffy rhymes about exotic
tweeters
Beyond your balcony at 2 a.m.

One can only wonder at the inclusion of these pieces: They have a certain scraped-together quality and make for a strange contrast to the rest of this soberly disciplined volume. □

FILMS.

ANDREW KOPKIND

After Hours
Mixed Blood

What do men want? If you asked filmmakers thirty years ago you'd get perfectly reasonable, straightforward answers like "to catch a big fish," or "to shoot down Japanese airplanes," or "to marry the girl next door." It's not so easy anymore. The cool culture has rendered the old virtues ridiculous and made the eternal verities seem absurd. Who would be willing now to offer the obvious reply that men want power, money, victory, dominance, immortality, that sort of thing? Filmmakers (and other crafty men) are still interested in the question—obsessed with it, even—but their artistic answers are couched in the devious, manipulative, self-effacing terms of the times. Stephen Spielberg says men want to be little boys. Francis Coppola says they want to be outlaws (and little boys). George Lucas says they want to flit through the heavens (and be little boys). And now Martin Scorsese offers the novel notion that, most of all, men want to be left alone. And be little boys.

Scorsese's *After Hours* is a nightmare about hassle. A meek, mild-mannered, obviously unattached young computer programmer (Griffin Dunne) is seated by himself in what looks like a clean, well-lighted Blimpie Base somewhere in safe, sensible upper Manhattan. He is mercifully oblivious to the weirdo cashier performing exotic hip-hop turns behind the register, but he is charmed when the girl at the next table (Rosanna Arquette) executes a quick pickup with some corny observations about Henry Miller. She cannily gets him to scribble her phone number in his *Tropic of Cancer*, and out of such chance encounters and daytime dalliances the ensuing nightmare is made.

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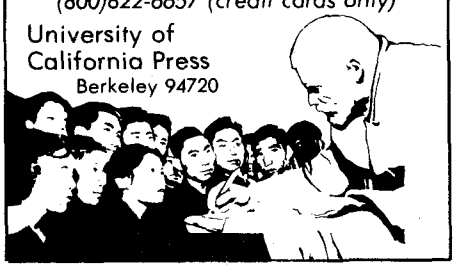

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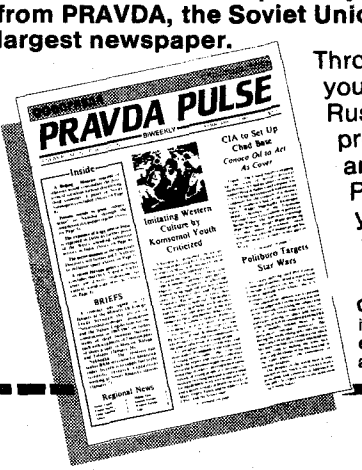

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little boys, the diffident, vulnerable Paul slips out of his safe quarter into the downtown of the unconscious, where all the fears of straight, white, stable English-speaking New York men take form as phantoms of the night. A succession of neurotic, sex-crazed, desperate women get him into dire straits. Arquette's Marcy is on the rebound from a boyfriend and seems to be permanently scarred in some way that coincides with a recurring nightmare from Paul's past. He flees from her loft in terror but soon finds himself in the bedroom of another nut case (Teri Garr), with a beehive hairdo, a fixation on the 1960s and a longing for love. Exit, again, in a hurry. He narrowly escapes the advances of a dominatrix (Linda Fiorentino), who turns out to be a submissitrix when her leatherbound boyfriend comes to call, and for a time he is fashioned into a papier-mâché sculpture by an aging artist (Verna Bloom), who has her studio under a punk-Nazi disco. Paul loses his money, his house keys, his shirt and, very nearly, his heterosexual virginity. He keeps running into Cheech and Chong, who are ingeniously cast as Puerto Rican burglars, and he is beset in several scenes by gay denizens of the dark, a surly taxi driver and women who would abrade old scars and open old wounds. They simply will not leave him alone.

Paul's defense against his predators is to roll over and play puppy, which I suppose is how men think they can fend off the dogs of sexual war and the demons that hound them in their dreams. It works, too, although not without some damage done and payment extracted in the currency of guilt, loneliness and isolation. Fortunately for Paul, a kind of peace, if not joy, comes in the morning, when the great gold doors of his office open and his computer greets him in its passive, sexless, undemanding way.

Scorsese puts his point into comic perspective with the same deft hand that defined human humiliation in *King of Comedy*. Written by a Columbia University film student (Joseph Minion), *After Hours* is probably the ultimate New York film school film. Every scene is clever beyond words, the characters are too picaresque by half and the whole work is infused with a bizarre bravado that seems to showcase the filmmaker's ego above the story on the screen. Southern California film school films are likely to take place in outer space. The New York variety all happen within ten square blocks of the classroom where the heavy equipment is stored. Then on to the music video.

Mixed Blood is a film out of another school and time—Andy Warhol's Factory of twenty years ago, where a certain oddball realism was developed, taught and presented in such films as *Chelsea Girls* and *Nude Restaurant*. Paul Morrissey, the star (and only surviving) student, learned his lessons well and went on to make a series of remarkable movies of that era and its strange sensibility. Morrissey did for the East Village and West Hollywood in the early 1970s what Vittorio De Sica and Roberto Rossellini did for Italy after World War II: he let the depressing reality of *lumpen* life speak for itself.

Morrissey is at it again, and only a few blocks east of the old neighborhood where Holly Woodlawn, Joe Dallessandro and the gang from *Trash* gave nihilism such a bad name. The crew in *Mixed Blood* is a mixed bag of dope dealers, street toughs and casual assassins who run the rackets of Alphabet City, the restricted ghetto of shooting galleries, needle parks and vacant lots between Avenues A and D in lower Manhattan. Loisada, as it is more accurately called, lies upon the rapidly gentrifying quarters beyond its borders like an overactive adrenal gland on the kidneys of gentility. All the subtle relationships, the subdued violence, the sublimated greed, the sentimentalism, commercialism and racism of the metropolis are reflected in high relief in the ghetto. Like *After Hours*, *Mixed Blood* projects an urban nightmare, but with more splatter and less class.

Morrissey is more interested in scene than story, and the plot about a drug war in "the Alphabet" is both incomprehensible and irrelevant. What matters is art, and the movie becomes a kind of kinetic painting, or an action cartoon for adult audiences. The blood, the drugs, the seedy sets and even the bad acting give the cartoon its pop realism, in the manner of Dickens—or Warhol. Morrissey's indestructible sense of camp foils any attempt to take the painting seriously on any terms other than its own. Only a prepostmodern philistine is horrified at the massacres, the junkies and the language. Those elements are like soup cans, flags and photographs in wall art, which must be taken not as specific comments on

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Campbell's, America or Marilyn Monroe but as vehicles for vision and signifiers of sophistication.

Mixed Blood is often comic, sometimes tedious, usually unpleasant but always self-referential. It is never a documentary, and it cannot be called authentic in the usual representational sense. The star of the show is the Brazilian diva Marilia Pera, who plays Fagin to a band of juvenile dealers and executioners with the campy élan of Sylvia Miles and the gritty strength of Anna Magnani. Her son Thiago (Richard Ulacia) is blank, bored and "a little slow," like Dallessandro in the old days, and most of the girls and boys of the band are obviously just off the street. Together they made an original and artful movie, and the best urban nightmare cartoon of the year. □

ART.

ARTHUR C. DANTO

Ralston Crawford

I have always felt a special compassion for artists who grow up under one set of artistic imperatives but are prevented from a normal development because they reach their artistic maturity under a contrary set. When Abstract Expressionism came to an abrupt end, for example, a number of young careers were simply blasted by the fact that the reflexes and attitudes that made for painterly abstraction were unsuited to the cool cynicisms of Pop. The masters, whose reputations were secure, were allowed to continue painting in the accepted style, even if it was considered slightly archaistic. But the second-generation Expressionists had to make shift or perish, for the market was no longer favorably disposed to gigantesque canvases clotted with swipes of energized pigment. The adoption of a painting style is, after all, not a casual matter: it can have the quality of a religious commitment as one becomes persuaded that a given direction is the right one, that it alone is where art must now go. Since our beliefs define our worlds, we do not change them easily for the same reason that we do not easily exchange one world for another. The artist beached by the tides of historical change is tragic in the sense of having been robbed of his reality.

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Sometimes change is so cataclysmic that even the masters are beached. Our century is almost perfectly bisected by an event that had the most momentous consequences for American art: around 1950 there was a reversal in the direction of artistic influence so total that it might be mathematically represented as a catastrophe flip. Painting in New York stopped taking its stylistic orders from Paris and began instead to issue its own. The inversion was sufficiently dramatic to give rise to the paranoid interpretation that New York had "stolen" the idea of modern art for sinister imperialist ends. However it is explained, it is incontestable that at midcentury New York became the engine of artistic manufacture, pumping forms, manners, attitudes and values through the conduits of high culture to the studios and galleries of the world. This meant that American painters were, perhaps for the first time in history, in a position to be world figures rather than simply leading Americans.

But what of those artists who had been leading Americans, and whose lines of development were now merely tangential to the orbit of world art? From the time of the Armory Show, the major artists of the United States had sought to adapt European, particularly French, ideas to American reality. This was true even of those who turned their backs on Europe in the name of regionalist authenticity. But now European artists were scrambling to accommodate American discoveries, and American artists with established reputations in the use of the superseded European mannerisms became redundant. It was as though one could no longer simply be an American painter: one painted to the world or not at all.

Ralston Crawford (1906-1978), to whom the Whitney Museum of American Art has devoted a respectful and dignified exhibition, continued to be an American artist with French tastes long past the time when this combination was considered suitable. He seems, as much from his paintings as from his biography, to have been a loner. But for a certain period, his image and manner promised to define a new American landscape—one not so much geometric as stylized along geometric lines—as he regimented to a severe and purified manner the industrial motifs that would have been appreciated as quintessentially American. His major reputation was established in 1939 with "Overseas Highway," a sharply abstract representation which instantly became as famous an American emblem as Grant Wood's gothic Americans, Whistler's mother, Washington crossing the Delaware or the Spirit of '76. Crawford faltered after his success, but before he was able to recover, functional oblivion settled over him; and though it may be argued that he achieved a vision that might otherwise have charted the great march forward of American art, he remained its only standard-bearer.

Crawford was fortunate in having a well-to-do wife, so he was able to live something of a swell's life. And he seems to have been blessed with a cast-iron ego and an unshakable confidence in his own artistic significance. Nevertheless, "Overseas Highway" seems to have been the metaphor for his existence—a highway to nowhere, unswerving, empty of traffic, with no exits and no place to stop or turn around. Only if American art had remained American could Crawford have had a future. He did not so much fail; circumstances thrust failure upon him, which vests him with a tragedy he did not altogether deserve. My own sense is that his would have been a solitary road even if the path of art in the twentieth century had remained linear, though this might have been disguised by the surfaces of his paintings, which made it seem that he was one of the throng.

Crawford was never an abstract artist as such but a representationalist whose pictures increasingly took on the look of abstractions. In this, I suppose, he bears comparison with the Cubists, whose fiercely fragmented and faceted surfaces remain sufficiently tethered to visual reality so that if one finds the formula, one is able, in effect, to exchange them for still lifes, interiors or even portraits. There is always, in Crawford, an implicit function which will take you to a specific piece of reality from a surface that looks arbitrary and abstract. "I never painted anything I did not see," he once remarked, and Barbara Haskell, who curated this show and furnished it with its scholarly catalogue, located photographs taken by the artist which enable one to solve the equations of artistic reference. "Fishing Boats #6," for example, painted in 1956, has precisely the appearance of an abstract work, with flat, moderately geometrized areas, the paint laid on smoothly, almost blandly, as if for a poster. But a photograph enables us to see that the thin white vertical rectangle, just off center, is the illuminated side of a ship's mast, while the adjacent black rectangle is its shadowed side. The circles and diagonals refer to items of maritime gear—ladders, ropes, net-rings, floats. Because the photographs are in black and white, it is difficult to know what visual reality corresponds to the colors of the canvas, but there are enough cues to suggest that they, too, are purified representations of actual colors. Probably, Crawford invented nothing but simply reduced what he saw to patterns that pleased him. Hence I suspect this must be true of color as well as of shape. The neat blues on the upper right of the canvas must refer to the color of water, while the silver fragment just left of the mast must depict some path of light across the surface of the calm harbor.

It is conceivable that the transformation from visual reality to what appears to be an abstract deployment of flat and angular shape is to be explained by certain feelings the reality invoked in the artist. I dare say Crawford would have endorsed such an account. But there is something so chilly in Crawford's work that I find this standard expressionist thesis unsatisfactory in his case. Instead, one has the sense of some analog mechanism breaking down the visual input into a graphic display as output. There is a taste for mechanical objects in Crawford's work, but the artist himself seems also to be a kind of mechanical transformer, and his landscapes convey the sense of reality replaced by a color-coded chart of itself. There is more human feeling in Malevich's "White on White"—once taken as the pinnacle of Suprematist purification—in which a white square almost dances on one of its corners than there is in Crawford's collected works. So it is less a matter of emotional response, I think, than of the imposition of an implacable artistic will. Crawford paints from a position of visual domination, replacing the jumbled face of things with an almost frightening, almost totalitarian order.

The icy will of these paintings is made particularly palpable when one comes to realize that often they are of subjects that might ordinarily elicit powerful emotions. There are, for example, tombs that Crawford frequented on his many visits to New Orleans. His "New Orleans Still Life" of 1951 is of a tomb, and "still life" thus becomes a morbid

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pun. Its dominant form is a rust-colored cone with a smart white band across it, geometrically similar to an adjacent shape that looks like a triangle with its corners broken off, which is in blue and black. To the right is a vertical bar, from bottom to top of the canvas, then a trapezoid and next to that a circle, all three shapes in ultramarine. From the photograph we learn that the cone is a kind of vase, doubtless rusted, set in a ring (the white band). The mutilated triangle is its shadow. The bar is the shadowed edge of the next tomb over; the trapezoid is the shadow of a tablet; the circle is a metal fastener. The epitaphs have been erased. Nothing tells you that it is a tomb—the painting looks like a suave abstraction in white, blue and gray with a daring touch of rust—but knowing what it is, one is struck by the fact that Crawford viewed it in terms of its formal opportunities.

And there is something frightening about an artist who prowls through cemeteries looking at the tombs as entities to be exploited for purposes of design. In "New Orleans #7," of 1954 to 1956, a number of jagged and wavy lines superimposed on forms that look like pieces of torn paper in a collage might, on formal grounds, suggest reference to the swags and drips of Pollock and certain familiar *papiers collés* of Matisse, say from his *Jazz*. But in cold truth they are representations of cracks in the plaster or patches where the stuccoed face of the tomb had fallen away. They are snappy pictures of decay. Monet once wondered what sort of a monster art had turned him into when he realized, sitting by the body of the wife he was supposed to be mourning, that he had been fixated on the purple of her eyelids. Crawford seems to have moved through life that way, a human constructed on the principle of a mechanism for computer graphics. So if there are feelings, they are powerfully suppressed.

These conjectures regarding his artistic personality are reinforced by two further sets of paintings, one of a wrecked bomber, the other of the atomic bomb tests at Bikini, which Crawford observed as an officially appointed artist. "My work is usually charged with emotion," he wrote once. "I realize this comment is quite at variance with many responses to my pictures, but I am never concerned with a pictorial logic to the exclusion of feeling." Well, if there is feeling, either it is

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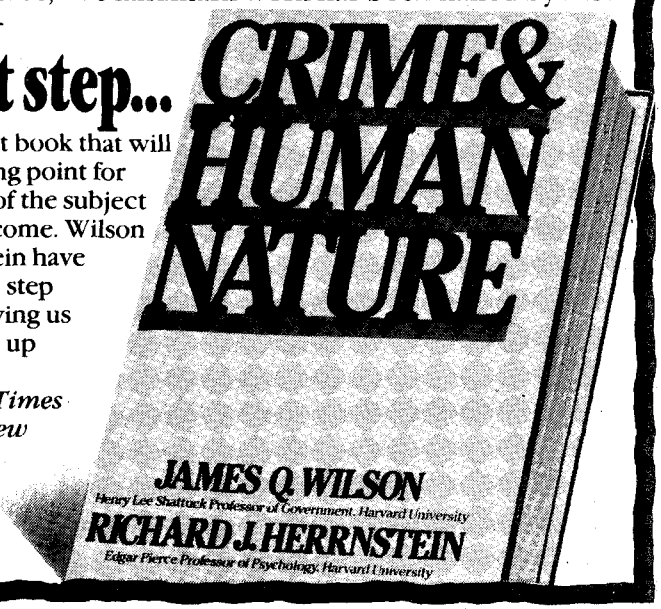
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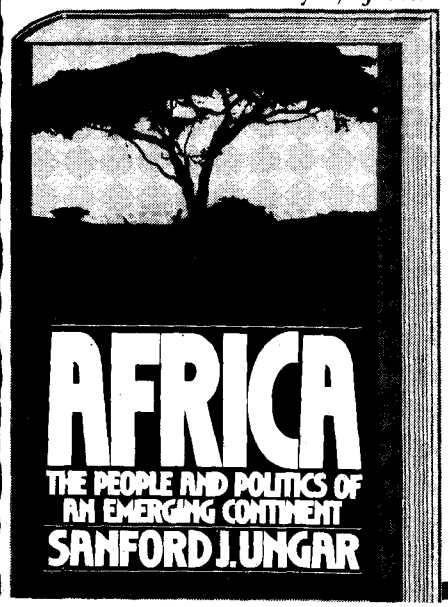

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not what ordinary people experience or it is poorly communicated. Of the paintings of Bikini, Haskell cites contemporary criticisms which verify the blank insufficiency of Crawford's forms to transmit sentiments appropriate to the event. One critic deplored the "startling indifference to the drama of the events depicted." Ad Reinhardt harshly asked, "Do crooked shapes and twisted lines represent painting's adjustment to the atomic age? (NO)." The perversity of the situation is that Crawford seems almost to have sought out charged motifs as an opportunity for displaying indifference. After all, he did not paint flowers, guitars, gardens, people strolling in the Bois de Boulogne, nudes, pitchers or self-portraits. Or perhaps the forms he settled on for his paintings were simply inadequate to the charged realities, so that he was racked by the tensions between what he felt and what his vocabulary allowed him to express. That his vocabulary was in large degree a kind of emotional carapace is suggested by the surprisingly affecting photographs he took of the jazz makers of New Orleans, for whom he must have had feelings uncharacteristic of his artistic persona. He stipulated that he be buried to the music of jazz bands. So death was perhaps always on his mind, and suppressing the feel of tombs may have been a way of keeping fear at bay.

Crawford was a fine photographer, but he ranked this art a low second alongside his painting. Such feeling as the paintings express—as opposed to suppress—seems at best to be global and in some sense abstract. He was a communist when that was the thing to be, and he became a Catholic toward the end of his life. My judgment is that the works he made during his radical phase were his best, just because style and subject were then perfectly suited to each other. These were studies of factories, which he regarded as America's counterparts to Europe's cathedrals. His long career of stylization begins here. The factories are as silent as cathedrals—there is no grime, no smoke, no sign of—well—industry. And in particular there are no workers, or human beings of any description. Instead, there are storage tanks, fences, pipes, condensers, electrical wiring and buildings flattened into the design and rhythm of their architectural parts. The skies are inappropriately blue for industrial reality, with the kinds of clouds preferred by angels. The buildings are set down in

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some nonnatural light which, like a religious illumination, casts no shadows. Or he has erased all the shadows that do not work as forms. There is no foliage, no animation, no movement, merely the bloodless clarity of forms robbed of their productivity by their role in a ruthless pattern.

Only at the end of his life, when he was a Catholic, do human beings enter Crawford's paintings, and then only to the extent that their humanity is concealed beneath the robes and hoods of the *penitente*. "Blue, Grey, Black" of 1973 could be read as an abstract composition of elongated triangles softened into curves. But it is, in fact, the subtracted residue of a scene with *penitente*, in conical headgear, photographed a year earlier in Seville. It is a sobering confirmation of the dehumanizing nature of Crawford's forms that he could deal with persons only when they became identified with shapes he knew how to handle. For all one knows, he seized upon such shapes in order not to have to deal with a more spontaneous reality. Factories without workers, robes without celebrants: these are the termini of his curious eliminativist career.

Unless you had something to do with the art world of the 1940s, Crawford will be unknown to you. In the exhibitions of that time, his paintings were familiar presences, part of the general effort to Americanize the language of European art. I always sensed in them a certain frigidity which marked them off from the abstract art his work so resembled. Abstraction could be boisterous and warm, but his painting had a mummified quality, as though the fluids of life had been drawn out and replaced by something alien to the forms it sought to preserve. I am accordingly grateful to the Whitney for this instructive show. Everyone supposed Crawford dead long before his actual death. Somehow it fits that he should finally have had a spectral connection to the art world, haunting its edges. His place in the history, realized and unrealized, of American art is as unresolved as ever. But one has a clearer picture of what he was.

The show remains at the Whitney until February 2, 1986. After that it travels to the Phillips Collection in Washington (April 19 to June 1); the Portland Art Museum (July 12 to August 31); the Akron Art Museum (September 18 to November 2); and the Grand Rapids Art Museum (November 17 to January 4, 1987). □

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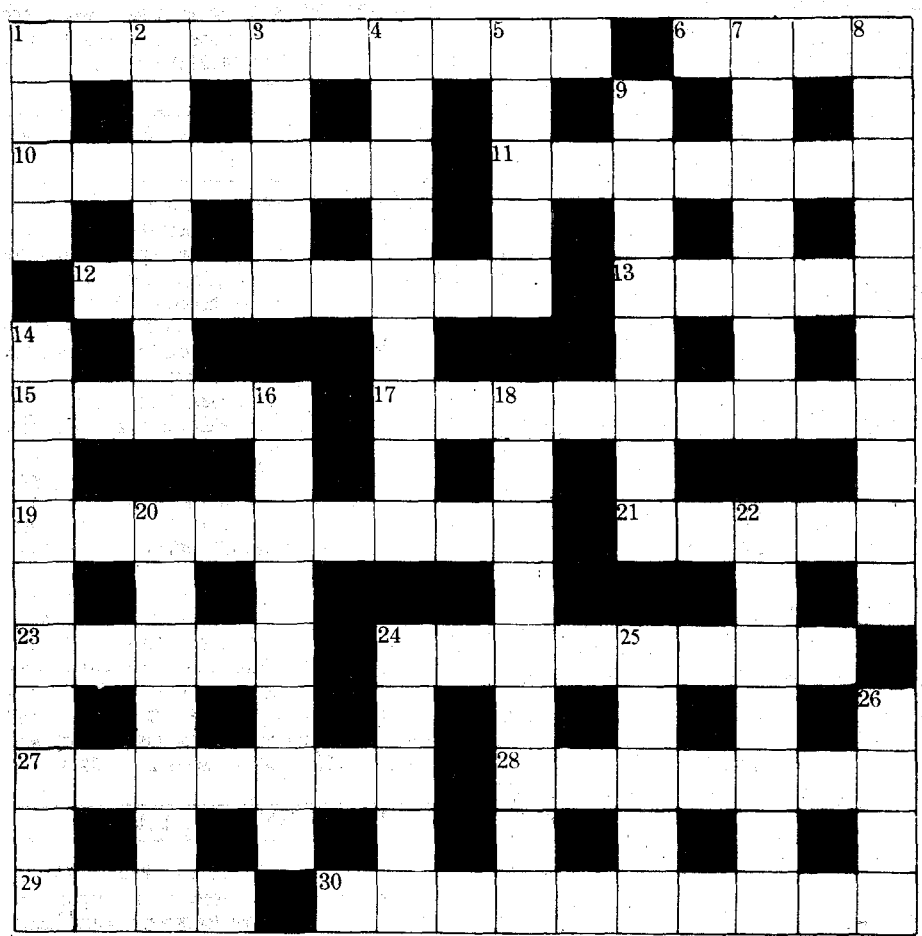
SOLUTION TO PUZZLE NO. 2080

■	R	A	I	N	I	N	T	H	E	F	A	C	E	■
A	■	N	■	U	■	A	■	A	■	I	■	O	■	P
I	S	T	H	M	U	S	■	C	A	N	A	S	T	A
R	■	I	■	I	■	S	■	K	■	I	■	T	■	L
R	I	C	K	S	H	A	W	S	■	S	P	A	C	E
I	■	■	■	M	■	U	■	A	■	H	■	R	■	■
F	A	B	I	A	N	■	A	W	A	I	T	I	N	G
L	■	A	■	T	■	A	■	S	■	N	■	C	■	A
E	N	S	C	O	N	C	E	■	A	G	N	A	I	L
■	■	T	■	L	■	A	■	I	■	S	■	■	■	L
S	L	I	G	O	■	D	E	S	E	C	R	A	T	E
A	■	N	■	G	■	E	■	O	■	H	■	R	■	O
R	E	A	L	I	S	M	■	B	R	O	A	D	E	N
I	■	D	■	S	■	I	■	A	■	O	■	E	■	S
■	S/N	O	U/R	T	H	C	A	R	O	L	I	N	A	■

Crossword Puzzle No. 2081

FRANK W. LEWIS



ACROSS

1 See 27
6 Quite a bit of property? (It isn't exactly 29.) (4)
10 What a religious man might wear with an animal and a bird around it. (7)
11 See 27
12 What the restaurant cook might use as a way of making tips? (8)
13 A possible alternative to flippers. (Fish also have them.) (5)
15 Pulled in cautiously (but a comfortable fit is implied). (5)
17 The stock type are not where you used to find those called "central." (9)
19 Memoranda for brain-stormers—or only those who expect the best? (9)
21 See 27
23 With a vocation like this, you're bound to find ruinous damage. (5)
24 Sort of pink in a sort of 29, but you can get hung up with it. (9)
27, 11, 21 and 1 Extremely elevated and absurd, being alpha and omega. (4,3,7,2,3,10)
28 Crooked dealing, yet quite a row might be made this way. (7)
29 Hilton horizon so called. (4)
30 Prior to what you might have to put up, a decent sort of finish. (10)

DOWN

1 Reputedly hard music to play for the younger set. (4)
2 Talk about records! They're about us! (7)
3 Reputedly, one doesn't wear it easily. (Showing how one might boast to a point.) (5)
4 Wordsworth, Coleridge and Southey spoke late of them, possibly. (4,5)
5 In the movies, it might be the antithesis of downstage in the theater, being nervous and irritable. (5)
7 Nothing leads to failing gradually in health like thinking in the old-fashioned way. (7)
8 What's under a stage in process might be relative; Cinderella had more than one. (10)
9 A summary of painting, possibly. (8)
14 In the sidelight, fully revealed as being highly pleasing. (10)
16 The air of a lass, in the air? (8)
18 Severely criticize the actors, with one taking the house proceeds. (9)
20 Wanting someone else's attributes, like Venus and Io combined, perhaps. (7)
22 Counter-change, being beat. (7)
24 Is being behind what makes it so strict? (5)
25 Bowie, for example, in the capital of Kentucky, coming to a fine end, perhaps. (5)
26 What comes up might go out, but that's one way to prepare the paper. (4)

PUZZLED?

No more cross words. If you don't see why "Lures" are "Ground Rules," send for those of Mr. Lewis to *The Nation*, 72 Fifth Avenue, New York, NY 10011.

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